

FC2VNEW1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

14 CR 534 (JSR)

5 HARVEY NEWKIRK,

6 Defendant.

JURY TRIAL

7 -----x

8 New York, N.Y.
9 December 2, 2015
9:25 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

ANDREW C. ADAMS

SARAH E. PAUL

17 Assistant United States Attorneys

18 HARRIS, O'BRIEN, ST. LAURENT & CHAUDHRY, LLP

Attorneys for Defendant Newkirk

19 JONATHAN A. HARRIS

PRIYA CHAUDHRY

20 JARED FOLEY

21 Also present: Stephan Francois, paralegal

Chloe Marmet, paralegal

22 Paul Deal, Secret Service

23 James Hilliard, FBI

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C. R. Darden - cross

1 (Trial resumed)

2 (Jury not present)

3 THE COURT: Good morning.

4 Let's bring in the jury.

5 (Jury present)

6 THE COURT: Good morning, ladies and gentlemen.

7 You are really good about being prompt. Even I did a
8 little bit better today.

9 So we are ready to continue.

10 MR. ADAMS: Thank you, your Honor.

11 CALVIN R. DARDEN JR.,

12 called as a witness by the Government,

13 having been previously duly sworn, testified as follows:

14 REDIRECT EXAMINATION

15 BY MR. ADAMS:

16 Q. Good morning, Mr. Darden.

17 A. Good morning.

18 Q. Do you recall yesterday Ms. Chaudhry asked you about your
19 impersonation of your father in various situations?

20 A. Yes.

21 Q. Did you impersonate your father on telephone calls to Mark
22 Weinberg?

23 A. I did.

24 Q. You were asked a number of questions regarding the spoofed
25 email that was purportedly for Mr. Weinberg.

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C. R. Darden - cross

1 Do you recall those questions?

2 A. I do.

3 Q. At the time that you sent the spoofed Weinberg email, did
4 you have Mr. Weinberg's approval to rescind his funds?

5 A. Certainly not.

6 Q. Had you told Mr. Newkirk that you had any such approval?

7 A. I did not.

8 MR. ADAMS: Your Honor, may I approach?

9 THE COURT: Yes.

10 Q. I'm handing you what's been marked for identification as
11 Government Exhibit 162.

12 Do you recognize that document?

13 A. I do.

14 Q. What is it?

15 A. It's an email from Harvey Newkirk to Larry Dietch and I'm
16 cc'd on it.

17 MR. ADAMS: Your Honor, the government offers 162.

18 MS. CHAUDHRY: Sorry. Just pulling it up.

19 No objection.

20 THE COURT: Received.

21 (Government's Exhibit 162 received in evidence)

22 Q. Mr. Darden, what's the date on that email?

23 A. It is November 11, 2013.

24 Q. Approximately how long before the spoofed email that you
25 created was this email sent?

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C. R. Darden - cross

1 A. I'm not sure. I'm not sure. I'm sorry.

2 Q. As of November 11th, 2013, how well were your negotiations
3 with Comvest actually progressing?

4 A. They weren't.

5 Q. What did you tell Mr. Newkirk before sending him the
6 spoofed email?

7 MS. CHAUDHRY: Objection.

8 Asked and answered in direct.

9 THE COURT: No, I'll allow it. Overruled.

10 A. Repeat the question please.

11 Q. What did you tell Mr. Newkirk before you sent him the
12 spoofed email?

13 A. I just told him that he was going to receive an email and
14 not to reply to it for as long as possible.

15 Q. And why did you want him not to reply to it for as long as
16 possible?

17 A. Because Mark Weinberg was going to see the email and would
18 reply to it. So I just, you know, needed time for it to get to
19 the other escrow account to buy time with the sellers.

20 Q. Did you speak with Mr. Newkirk again after you had sent him
21 the spoofed Weinberg email?

22 A. I did.

23 Q. Had he, in fact, delayed his reply?

24 A. He had.

25 Q. And I believe you testified earlier about the meeting with

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C. R. Darden - cross

1 Mr. Newkirk in your truck the day after the spoofed email?

2 A. That's correct.

3 MS. CHAUDHRY: Objection.

4 Outside the scope.

5 THE COURT: Overruled.

6 Q. What did you and Mr. Newkirk discuss in your truck the day
7 after --

8 MS. CHAUDHRY: Objection.

9 Asked and answered in direct.

10 THE COURT: Overruled.

11 Q. What did you and Mr. Newkirk discuss in your truck the day
12 after the Mark Weinberg spoofed email?

13 A. What the people at his firm were saying about the
14 situation, what type of -- if the authorities had been -- if
15 Mr. Weinberg had alerted the authorities. We talked about, I
16 believe, the escrow -- the Bodman escrow was in Michigan. And
17 we talked about the funds being in that escrow account; if
18 there's a dispute, it would have to stay in that -- stay in
19 that account.

20 That was -- you know, that was generally -- generally
21 it.

22 Q. What, if anything, did Mr. Newkirk tell you about
23 continuing to try to close the deal at that point?

24 A. That that would be the only way to kind of solve the
25 problem is that we would have to get it closed.

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C. R. Darden - cross

1 Q. And what, if anything, did Mr. Newkirk tell you about how
2 closing the deal would solve your problem?

3 A. In that, you know, he gets his money back; no harm, no foul
4 essentially.

5 Q. You testified yesterday about a number of documents and
6 incidents where you used the fake initial "R" for your father's
7 name, Calvin R. Darden Senior.

8 A. Yes.

9 Q. You had testified about using that to create some sense of
10 ambiguity.

11 A. That's correct.

12 Q. Did you and Mr. Newkirk discuss the use of that false
13 initial "R" even prior to the Maxim deal?

14 A. We had.

15 Q. Can you describe your discussions regarding that use of the
16 false initial even before the Maxim deal.

17 A. So the first discussion -- that was actually something that
18 I brought up. And I just told him that my father did not have
19 a middle initial, so a Calvin R. Darden Senior didn't exist.

20 Q. You said you brought it up prior to the Maxim deal. Who
21 raised the issue of using that false initial in the course of
22 the Maxim deal?

23 A. Harvey.

24 Q. Can you describe the circumstances under which he raised
25 the issue of using that fake name prior in the Maxim deal.

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C. R. Darden - cross

1 A. Sure.

2 So it was, you know, in regards to putting along the
3 document, he just reminded me of the conversation that we had
4 previously had and said that it would -- it would cause
5 ambiguity and provide a cover.

6 Q. Ms. Chaudhry asked you yesterday a number of questions
7 about the various versions of that Merrill Lynch proof of funds
8 letter.

9 Do you recall those?

10 A. I do.

11 MR. ADAMS: Could we please publish what's already in
12 evidence as Government Exhibit 630 and just go to the very last
13 page please.

14 Q. Mr. Darden, is this one of those fake Merrill Lynch
15 letters?

16 A. It is.

17 Q. Did Roderick Jones ever know about your use of this letter?

18 A. Certainly not.

19 Q. Who actually signed the name "Roderick A. Jones"?

20 A. I did.

21 Q. What, if anything, did Mr. Newkirk tell you about why the
22 letter needed to be addressed to him as opposed to anyone else?

23 MS. CHAUDHRY: Objection.

24 Asked and answered in direct; not covered in cross.

25 THE COURT: No, I think this is broadly within the

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C. R. Darden - cross

1 scope.

2 I define scope, just for guidance of counsel, quite
3 broadly. And, of course, you will have full opportunity on
4 recross if you want to get into an area that you think wasn't
5 adequately covered on cross.

6 MS. CHAUDHRY: Thank you.

7 A. That there would be less liability; that if we had made it
8 to whomever it was intended for, they could -- in the event
9 that the deal didn't get closed, they could turn around and sue
10 based on that letter. But it would be less liability because
11 it was made out to him and he wasn't going to turn around and
12 sue us. So it was less liability.

13 Q. Do you recall Ms. Chaudhry asking you some questions about
14 an Atlanta area area code phone number that you used to
15 impersonate your father?

16 A. I do.

17 MR. ADAMS: Can we please publish what's in evidence
18 as Defense Exhibit 566 and go to page 3. I'm sorry, it's going
19 to be a few more pages in. Page 3 of the actual attachment.
20 One more. There we go.

21 Q. Mr. Darden, do you recall discussing this working group
22 list yesterday?

23 A. I do.

24 Q. On the contact name for Calvin Darden Senior, is that your
25 father's address?

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C. R. Darden - cross

1 A. It is not.

2 Q. What is that address?

3 A. That is -- the 375 Park Avenue?

4 Q. Yes, sir.

5 A. That was a virtual office here in Manhattan that I set up.

6 Q. The mobile telephone number ending 5686, whose telephone
7 number is that?

8 A. Mine.

9 Q. How long have you been using that phone number at the time
10 that this working group list came out?

11 A. Since 2008.

12 Q. Have you spoken with Mr. Newkirk using that telephone
13 number over the course of your relationship?

14 A. I have.

15 Q. For how long approximately had you used that phone number
16 to speak to Mr. Newkirk?

17 A. Since we met.

18 Q. Would you impersonate your father on that phone number when
19 you'd speak to Mr. Newkirk?

20 A. I would not.

21 Q. The email address here, cdarden@thereigninc.com, how long
22 have you been using that to communicate with Mr. Newkirk?

23 A. Since 2008.

24 MR. ADAMS: Can we please publish what's in evidence
25 by stipulation as Government Exhibit 110.

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C. R. Darden - cross

1 Can we please blow up the information.

2 Q. Mr. Darden, do you have that on your screen there?

3 A. I do.

4 Q. Can you please read what is provided in the line that
5 begins "F in" in the middle.

6 A. It says Cal Darden Junior.

7 Q. What is the email address directly below that?

8 A. Cdarden@thereigninc.com.

9 MR. ADAMS: Your Honor, may I approach?

10 THE COURT: Yes.

11 Q. I'm handing you what is already in evidence as Government
12 Exhibit 702.

13 Mr. Darden, what's the date on that email?

14 A. October 3rd -- October 3rd, 2011.

15 Q. And what is this email?

16 A. This is -- this was another deal that Harvey and I were
17 looking at. And it's in -- you know, it's an email from me to
18 the gentlemen in the group giving -- providing everyone's
19 contact.

20 Q. And what is the contact info that you provide for yourself?

21 A. 347-850-5685.

22 Q. Is that phone number right?

23 A. No, that was a typo. My number is actually 5686.

24 MR. ADAMS: Can we please publish what's in evidence
25 as Defense Exhibit 505.

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C. R. Darden - cross

1 Q. Mr. Darden, do you recall discussing this with Ms. Chaudhry
2 yesterday?

3 A. I do.

4 Q. When you provided the phone number, this Atlanta area code
5 ending in 4067, were you intending to fool Harvey Newkirk with
6 this email?

7 A. I was not.

8 Q. Who were you intending to fool?

9 A. Barbara Laurence.

10 Q. Did you ever speak with Mr. Newkirk on the 4067 number with
11 the intent of duping him into believing it was your father's
12 phone.

13 A. I have not.

14 MR. ADAMS: Can we please publish what's in evidence
15 as Defense Exhibit 562 and 563.

16 We can put those side-by-side please.

17 Q. Mr. Darden, do you recall reviewing those documents
18 yesterday?

19 A. I do.

20 MR. ADAMS: Can we please now publish what's in
21 evidence as Government Exhibit 168 and 169.

22 Q. Are those emails the same as the defense exhibits that
23 Ms. Chaudhry walked you through?

24 A. I believe so.

25 Q. Have you already been shown those documents on direct

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C. R. Darden - cross

1 examination the week before?

2 A. I have. I was.

3 MR. ADAMS: Can we please go to what's in evidence as
4 Defense Exhibit 519, page 2.

5 Q. Do you recall discussing these employment letters yesterday
6 on cross?

7 A. I do.

8 Q. Who was going to be the Maxim management team in the
9 transition between Alpha Media and Darden Media if Darden Media
10 had actually purchased Maxim?

11 A. The current -- the then-current team at that point.

12 Q. What was the purpose of entering into new employment
13 agreements with the then-current team?

14 A. Because we didn't really -- we didn't know anything about
15 running the assets. We were going to have to keep them on for
16 a very limited time until we could replace them with -- with,
17 you know, new people.

18 Q. And in the course of your discussions about new management,
19 was it any secret that you were looking at other people to come
20 in and manage *Maxim Magazine*?

21 A. No, not at all.

22 Q. You were asked at length on cross about who some of your
23 clients were or who you had represented your clients to be at
24 Merrill Lynch and AIC. Do you remember that?

25 A. I do.

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C. R. Darden - cross

1 Q. To your knowledge, was your father ever a client of Harvey
2 Newkirk's?

3 A. He was not.

4 MR. ADAMS: Your Honor, could I ask for just a brief
5 sidebar before I show the next exhibit?

6 THE COURT: All right.

7 (Continued on next page)

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C. R. Darden - cross

1 (At the side bar)

2 MR. ADAMS: Thank you.

3 The next exhibit I want to show is 701. It's in
4 evidence through stipulation. Ms. Chaudhry talked about it
5 yesterday.

6 Ms. Chaudhry did not publish the first page of it
7 yesterday and I intend to do that today. At this point I don't
8 think there is any need to redact any of this. It does
9 reference the boxing deal, but I'm not about to ask anything
10 about the fraud on the boxing deal. I'm going to be focusing
11 entirely on the line that says Invictus will be investing into
12 Reign. Before I did that, I wanted to make sure I wasn't going
13 to draw an objection.

14 THE COURT: Well, I think it would be -- I'm going to
15 leave it to defense counsel. If you want portions of this
16 exhibit redacted, I am inclined to grant that.

17 MS. CHAUDHRY: I would agree.

18 THE COURT: I am going to allow the inquiry on the
19 part that the government has indicated.

20 MS. CHAUDHRY: I can't see it.

21 THE COURT: This is called heightism. The prosecutor
22 is clearly guilty of it.

23 MR. ADAMS: Sorry.

24 MS. CHAUDHRY: Can we come back to this so I could
25 have a chance to look at --

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C. R. Darden - cross

1 THE COURT: You can just put up the portion on the
2 screen without showing the rest and then later on you can work
3 out any redactions.

4 MS. CHAUDHRY: Yeah.

5 THE COURT: Okay.

6 (Continued on next page)

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C. R. Darden - cross

1 (In open court)

2 BY MR. ADAMS:

3 Q. In the government's binder in front of you there's a tab
4 for government exhibits -- it's the smaller of the two.
5 There's a tab marked Government Exhibit 701. And this is in
6 evidence.

7 MR. ADAMS: Ms. Marmet, can we publish just the
8 portion that we've discussed.

9 Q. Mr. Darden, once you've found that document, let me know if
10 you recognize it.

11 A. I do.

12 Q. You testified on cross-examination about money that you had
13 made from prior frauds, right?

14 A. Yes.

15 Q. Did Mr. Newkirk stand to profit from the Maxim deal if it
16 closed?

17 A. He did.

18 Q. Did Mr. Newkirk have a financial interest in Reign
19 Entertainment Group?

20 A. He did.

21 Q. Could you please read for us just the paragraph that's
22 displayed on the screen in front of you.

23 A. Dear Mr. Darden, in order to enable Invictus Ventures LLC,
24 Invictus, and Reign Entertainment Group LLC, Reign, to enter
25 into mutually-agreeable agreements concerning the investments

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C. R. Darden - cross

1 by Invictus through Invictus-FMMPI, LLC a to-be-formed Delaware
2 limited liability company into Reign, Invictus and Reign, each
3 a party and collectively the parties, hereby confirm their
4 mutual intentions.

5 Q. So did you enter into this agreement with Mr. Newkirk?

6 A. I did.

7 Q. What's the date of that agreement?

8 A. May 4th, 2010.

9 Q. Through this agreement, which entity is investing into
10 which entity?

11 A. Invictus --

12 MS. CHAUDHRY: Objection.

13 Speaks for itself.

14 THE COURT: No. Overruled.

15 A. Invictus Ventures is investing into Reign.

16 Q. What was your understanding of who controlled Invictus
17 Ventures?

18 A. Harvey Newkirk.

19 Q. To your knowledge, did Mr. Newkirk ever tell any of your
20 potential lenders about his interest in Reign Entertainment?

21 A. Not to my knowledge.

22 MR. ADAMS: Can we please publish what's in evidence
23 as Defense Exhibit 241 please.

24 Q. Mr. Darden, do you recall testifying yesterday about this
25 long email?

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C. R. Darden - cross

1 A. I do.

2 Q. Do you recall testifying about the reference to the car
3 loan --

4 A. I do.

5 Q. -- in this email?

6 A. Sorry. I do.

7 Q. Was your father willing to cosign a car loan for you?

8 A. He was not.

9 Q. How, if at all, was his attitude any different with respect
10 to signing a \$31 million personal guarantee for the Maxim deal?

11 A. It wasn't any different. But I didn't ask him to sign a
12 personal -- you know, a \$31 million guarantee because I knew
13 what his answer would be.

14 Q. You were asked yesterday about creating a gmail account
15 under Mr. Newkirk's name. Do you recall that?

16 A. I do.

17 Q. Do you remember the circumstances under which you created
18 that account?

19 A. I don't.

20 Q. Did you ever use that account?

21 A. I haven't.

22 Q. When was the last time you accessed that account?

23 A. Within your office, a conference room.

24 Q. And before that when was the last time you had accessed it?

25 A. I couldn't even tell you.

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C. R. Darden - cross

1 Q. When you last accessed that account, who was present in the
2 room with you?

3 A. You were present, I believe co-counsel, I believe it was
4 the agent, Mr. Hilliard.

5 Q. And what did you see, if anything, in the sent email folder
6 in that account?

7 A. There were no sent emails.

8 Q. What did you see in the received email folder in that
9 account?

10 A. There were none.

11 Q. Let me ask you to turn or to look at Defense Exhibit 543 in
12 evidence.

13 Do you remember being asked some questions about this
14 document?

15 A. I do.

16 Q. Do you recall what the attachment for Project Beta Darden
17 Media Indication of Interest Letter was?

18 A. I believe it was our indication of interest that would be
19 going to the investment bankers indicating our interest in
20 Maxim.

21 Q. Do you recall being asked whether or not Mr. Newkirk
22 appears on that document?

23 A. I do.

24 Q. Is Mr. Newkirk included among the people in the top email,
25 the one that -- not the forwarded email?

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C. R. Darden - cross

1 A. He is not.

2 MR. ADAMS: Your Honor, may I approach?

3 THE COURT: Yes.

4 Q. Mr. Darden, I've handed you what is marked for
5 identification as Government Exhibit 2008.

6 Do you recognize that document?

7 A. I do.

8 Q. What is it?

9 A. It's an email from me to Harvey.

10 Q. What's the date?

11 A. It is July 15th, 2013.

12 MR. ADAMS: The government offers Exhibit 2008.

13 MS. CHAUDHRY: No objection.

14 THE COURT: Received.

15 (Government's Exhibit 2008 received in evidence)

16 Q. Mr. Darden, when you write to Mr. Newkirk at the top, "Do
17 we need to attach a draft of a Merrill letter," what is the
18 document to which you were asking whether the Merrill letter
19 needed to be attached?

20 A. The interest letter.

21 Q. The same one that you just looked at in Defense Exhibit
22 543?

23 A. Correct.

24 Q. Is that a draft of the false Merrill Lynch letter?

25 A. That's correct.

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C. R. Darden - cross

1 Q. Were you shown this document on cross-examination?

2 A. I was not.

3 Q. What were you asking Mr. Newkirk in this?

4 MS. CHAUDHRY: Objection.

5 Document speaks for itself.

6 MR. ADAMS: Withdrawn, your Honor.

7 Q. Mr. Darden, why were you asking Mr. Newkirk whether you
8 needed to attach a draft of the Merrill letter?

9 A. Because he was the one negotiating with the investment
10 bankers and anything, you know, that -- I wanted to know his
11 opinion if it had to be attached or not, if it will be
12 satisfactory.

13 Q. You were also shown another example of a Merrill Lynch
14 letter from December of 2013. Do you recall looking at that
15 document?

16 MR. ADAMS: Can we call up Defense Exhibit 473 please.

17 Q. Do you remember discussing this December 16th letter?

18 A. I do.

19 Q. Who had provided you the language to use in all of your
20 Merrill Lynch letters?

21 A. Harvey.

22 MR. ADAMS: Your Honor, may I approach?

23 THE COURT: Yes.

24 Q. Mr. Darden, I'm showing you what's been marked for
25 identification as Government Exhibit 176.

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C. R. Darden - cross

1 Do you recognize that document?

2 A. I do.

3 Q. What is it?

4 A. It's an email from Harvey to Cal Darden Junior.

5 Q. What's the date?

6 A. July 24, 2013.

7 Q. When you say to Cal Darden Junior, to which email account
8 was this being sent?

9 A. Cdarden@thereigninc.com.

10 MR. ADAMS: Your Honor, the government offers
11 Government Exhibit 176.

12 MS. CHAUDHRY: No objection.

13 THE COURT: Received.

14 (Government's Exhibit 176 received in evidence)

15 Q. Mr. Darden, was the Merrill Lynch letter the only
16 fraudulent letter that Mr. Newkirk helped you draft?

17 A. It was not.

18 Q. What are you discussing with Mr. Newkirk in this pair of
19 emails?

20 A. It was a loan for 250,000.

21 Q. For what purpose?

22 A. This may have been -- I'm not 100 percent sure, but it
23 looks like it was the Live Nation --

24 MS. CHAUDHRY: Objection.

25 Sidebar.

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C. R. Darden - cross

1 THE COURT: No, I sustain the objection, so there's no
2 need for sidebar.

3 Well, let's see what the next question is and we'll
4 see if we need a sidebar.

5 Q. Mr. Darden, had your father agreed to provide a personal
6 guarantee in connection with any of your business for Reign
7 Entertainment Group?

8 A. No.

9 Q. You were asked --

10 MS. CHAUDHRY: Your Honor, may we approach?

11 THE COURT: All right.

12 (Continued on next page)

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C. R. Darden - cross

1 (At the side bar)

2 MS. CHAUDHRY: Your Honor, before we began this trial,
3 I asked the government for notice of all other bad acts they
4 intended to introduce. The only thing they brought up was the
5 mailman thing which was the boxing venture which we've already
6 litigated.

7 This is now a separate venture that they just brought
8 up. There's nothing on the face of that email that indicated
9 it had anything to do with anything other than the Maxim
10 transaction. The government never indicated to me that they
11 were going to be introducing evidence of other bad acts of
12 Mr. Newkirk's. This is a 404(b) offer of evidence by the
13 government that was never given the defense notice. It's
14 inappropriate. It's incredibly prejudicial.

15 THE COURT: So why did you not object to the exhibit?

16 MS. CHAUDHRY: The exhibit has nothing on it that says
17 Live Nation and the dates of which are in the Maxim fraud. It
18 never would have occurred to me that they are offering other
19 evidence of another bad act.

20 THE COURT: What is this?

21 MR. ADAMS: Your Honor, frankly, I had understood that
22 this was a portion of the Maxim deal.

23 I'll withdraw it.

24 THE COURT: Oh, okay.

25 MS. CHAUDHRY: The jury already heard it.

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C. R. Darden - cross

1 I just want to make my record that --

2 THE COURT: Wait, wait, wait.

3 What did the jury hear? They heard a question to
4 which I sustained an objection, so they know to disregard any
5 answer that was given and they know to disregard the question.
6 And they heard you say no objection to the admission of an
7 exhibit.

8 So what is it that you say that they've heard?

9 MS. CHAUDHRY: I don't have the transcript.

10 I believe they heard him say, Who gave you that
11 language and what was it part of?

12 He said, It was part of a Live Nation deal that I was
13 also something.

14 THE COURT: All I know is I sustained the very first
15 objection you raised and the exhibit, which was introduced
16 without objection.

17 Now, if you want me to strike the exhibit, I will do
18 that, but I don't see what else -- and I think the whole thing
19 is making a mountain out of a molehill.

20 MR. ADAMS: Your Honor, also the Live Nation was
21 something that Mr. Darden was crossed on yesterday.

22 THE COURT: Oh, is that right?

23 THE DEFENDANT: Your Honor --

24 THE COURT: No, no, no, no. I cannot hear from
25 noncounsel.

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C. R. Darden - cross

1 MS. CHAUDHRY: Your Honor, he was crossed on it. The
2 government has never until this moment in this question
3 indicated, even when I asked them for other bad acts, that
4 Mr. Newkirk had any involvement in this.

5 THE COURT: Look, he's withdrawing any further
6 questions on that. So your point has been accepted by the
7 government.

8 Now, what is it you want me to do at this point other
9 than what has now been done on consent?

10 MS. CHAUDHRY: Your Honor, I would just ask the
11 government if they met with their witness last night to prepare
12 him for today and if there's any other testimony that is going
13 to come out about other frauds, I would like to know now.

14 MR. ADAMS: We did not meet with our witness last
15 night. And if there is anything that strikes me even coming
16 close to it, I'll ask for a sidebar.

17 THE COURT: Okay.

18 MR. HARRIS: Your Honor, may I?

19 THE COURT: How many voices are going to be heard?

20 MR. HARRIS: I'm trying to be responsive to my client,
21 your Honor.

22 THE COURT: All right. Go ahead.

23 MR. HARRIS: Mr. Newkirk believes that the government
24 used the word "fraud" in their question.

25 THE COURT: So what?

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C. R. Darden - cross

1 You know, have the lawyers, the very fine, experienced
2 lawyers in this case have no respect for the jury? The jury
3 knows that when I sustain an objection they are to disregard
4 it. My instructions, of course, will repeat that to it, I
5 think it's about the third paragraph of my instructions if you
6 looked at them. So I don't know what you're talking about
7 here.

8 The objection was made. The objection was sustained.

9 (Continued on next page)

FC2VNEW1

C. R. Darden - cross

1 (In open court)

2 BY MR. ADAMS:

3 Q. Mr. Darden, you were asked yesterday about a Reign
4 Entertainment bank account that you maintained at Merrill
5 Lynch. Do you recall those questions?

6 A. I do.

7 Q. Did your father have any control over that account?

8 A. Did not.

9 Q. Father have any participation in setting up that account?

10 A. He didn't.

11 Q. You were also asked some questions about what was referred
12 to as the NBA fraud yesterday.

13 A. That's correct.

14 Q. Did your father know that you were pursuing opportunities
15 relating to the National Basketball Association?

16 A. He did.

17 Q. Did he approve of you going after those opportunities?

18 A. He did.

19 Q. Did he know that you were impersonating him with respect to
20 the NBA fraud?

21 A. He did not.

22 Q. Did he approve of you impersonating him in the NBA fraud?

23 A. Of course not.

24 Q. Was that any different than his position with respect to
25 the Maxim deal?

FC2VNEW1

C. R. Darden - cross

1 A. No.

2 Q. Mr. Darden, did you ever try to deceive Mr. Newkirk
3 regarding your father's health status?

4 A. I did not.

5 Q. Now, you were asked some questions about lies that were
6 told about your father's health yesterday. Do you recall that?

7 A. I do.

8 Q. At any point did you ever receive an email from Mr. Newkirk
9 asking you if your father was feeling better?

10 A. No.

11 Q. Did you ever receive any phone calls from Mr. Newkirk
12 asking you how your father was feeling?

13 A. No.

14 Q. Did you ever receive any condolences for your grandmother
15 who you had lied about having died?

16 A. I didn't. Did not. Sorry.

17 Q. You testified that there was a period of time that you and
18 your father weren't speaking, right?

19 A. That's correct.

20 MR. ADAMS: Your Honor, may I approach?

21 THE COURT: Yes.

22 Q. I've handed you two documents marked for identification.

23 First, if you'd look at what's marked as Government
24 Exhibit 2009. Do you recognize that document?

25 A. I do.

FC2VNEW1

C. R. Darden - cross

1 Q. What is it?

2 A. It's an email from the lawyer at K&L Gates to me, Harvey,
3 Shane McMahon, a bunch of people from Forefront.

4 MR. ADAMS: Your Honor, the government offers 2009.

5 MS. CHAUDHRY: Objection.

6 Relevance.

7 THE COURT: Pardon?

8 MS. CHAUDHRY: Relevance.

9 THE COURT: Can't tell yet.

10 So as we did during your cross, we'll receive it for
11 now subject to being stricken and omitted if it turns out to be
12 irrelevant.

13 So put your next question.

14 MR. ADAMS: Thank you, your Honor.

15 I'll come back to this in just a moment to loop it in.

16 THE COURT: Well --

17 MR. ADAMS: But in a very short moment.

18 THE COURT: All right.

19 MR. ADAMS: Thank you.

20 BY MR. ADAMS:

21 Q. Mr. Darden, you were asked some questions about when you
22 started speaking with your father again; correct?

23 A. I did.

24 Q. You were shown about your telephone records that showed you
25 started speaking with your father on January 12th as opposed to

FC2VNEW1

C. R. Darden - cross

1 the 22nd?

2 A. Yes. I actually meant the 12th; it was a Sunday.

3 Q. Why do you have a recollection it was a Sunday in
4 particular?

5 A. Because my mother called me. I was in church. My mother
6 called me. Actually, I had to step out because she wanted
7 me -- she said that she had enough and wanted me to call my
8 father.

9 MS. CHAUDHRY: Objection.

10 Hearsay. Move to strike.

11 THE COURT: No, I don't think it's being offered for
12 the truth; it's being offered for why he had a recollection of
13 that particular Sunday.

14 Overruled.

15 MR. ADAMS: Your Honor, with respect to relevance in
16 2009, I just direct you to the date and day.

17 THE COURT: Okay. I see it now.

18 So 2009 will remain. Received.

19 (Government's Exhibit 2009 received in evidence)

20 MR. ADAMS: Can we please publish 2009.

21 Q. Mr. Darden, can you tell us what day of the week January
22 12th was?

23 A. Sunday.

24 (Continued on next page)

Fc26new2

1 BY MR. ADAMS:

2 Q. Despite having reconnected with your father on January 12th
3 was your father willing to resume his advisory role with
4 respect to the Maxim deal?

5 A. He was not.

6 Q. Did you tell him at that time that he was being sued by
7 Open Gate Capital?

8 A. I did not.

9 Q. To your knowledge did Mr. Newkirk inform him that he was
10 being sued by Open Gate?

11 A. Not to my knowledge.

12 MR. ADAMS: Can we please look at what is in evidence
13 as Defense Exhibit 422.

14 Q. Mr. Darden, do you recall testifying about this yesterday?

15 A. Yes.

16 Q. When Mr. Newkirk wrote to you, I am writing in reference to
17 the action filed at Open Gate against the various Darden
18 parties," why was Mr. Newkirk writing to you on this day?

19 A. Because we had spoken about me getting another lawyer. He
20 said his firm couldn't do it and he had to send an e-mail
21 basically saying such.

22 Q. So what did Mr. Newkirk tell you the purpose of this e-mail
23 was?

24 A. I am sorry. I don't recall what the purpose of the e-mail
25 was.

Fc26new2

1 Q. According to Mr. Newkirk who had originally requested that
2 such an e-mail be sent?

3 A. His higher-ups at his firm.

4 Q. To whom was it supposed to be sent?

5 A. To my father.

6 Q. What had Mr. Newkirk told you at that point about the
7 access of others at Bryan Cave to his Bryan Cave e-mail
8 account?

9 A. Any e-mail coming in and going out was subject to being
10 seen by other people at his firm.

11 Q. You were asked yesterday about a long series of documents
12 that were found in your home.

13 Do you recall that?

14 A. I do.

15 Q. Who would send you signature pages for your signature and
16 execution?

17 A. Harvey.

18 Q. Did those include signature pages that included a fake name
19 Calvin R. Darden Senior?

20 A. They did.

21 MR. ADAMS: Can we please publish what is in evidence
22 as Defense Exhibit 705.

23 Q. Do you recall looking at that document yesterday?

24 A. I do.

25 Q. Do you recall testifying that you did not draft that

Fc26new2

document?

A. That's correct.

Q. Who did draft that document if you recall?

A. If I recall it was Harvey that drafted the document.

Q. Let me ask you to turn to what has been marked for identification as Government Exhibit 2010 in front of you. I handed that up a moment ago. Take a moment to look through that and tell me if you recognize that document.

A. I have 2009. I don't believe I have '10.

Q. One moment.

A. Thanks.

Q. Do you recognize that document?

A. I do.

Q. What is it?

A. This is a loan agreement from the lawyers of one of the perspective investors.

Q. Can you describe the various attachments generally?

A. The first attachment is a loan agreement. The second attachment is the direction to pay loan, which I believe we just looked at.

Q. Is that an e-mail and who is it from?

A. It is. It's -- it's an e-mail from the prospective investors' lawyer to Harvey.

Q. What is the date on the top e-mail?

A. Sorry. January 29th, 2014.

Fc26new2

1 Q. Are you included among the recipients at the top of e-mail?

2 A. I am.

3 MR. ADAMS: Your Honor, the government offers Exhibit
4 2010.

5 A. Wait. I am sorry. At the very top it says from Calvin
6 Darden to Harvey Newkirk. Below that it is from the lawyer to
7 Harvey Newkirk and I am CC'd. But the very top it is from
8 Calvin Darden to Harvey Newkirk.

9 MR. ADAMS: Your Honor, the government offers Exhibit
10 2010.

11 MS. CHAUDHRY: Your Honor, brief voir dire?

12 THE COURT: Okay.

13 VOIR DIRE

14 BY MS. CHAUDHRY:

15 Q. Mr. Darden, did you just testify that Kyle Miller at Pryor
16 Cashman was Shaul Greenwald's lawyer?

17 A. I don't know whose lawyer. Kyle Miller is at Pryor
18 Cashman. Pryor Cashman is a law firm so I am not sure whose
19 lawyer he is.

20 Q. I believe you just testified that he was the lawyer for the
21 lender?

22 A. I said the prospective lender, I believe.

23 Q. That would be Shaul Greenwald's lawyer?

24 A. I don't know -- there were a bunch of prospective lenders
25 so it doesn't say here.

Fc26new2

1 Q. Mr. Darden, wasn't Kyle Miller of Pryor Cashman your
2 attorney at some point in this deal?

3 A. Not that I re-- my attorney?

4 MR. ADAMS: Objection. I don't know what this has to
5 do with the admissibility of the document.

6 THE COURT: Well, this is voir so it is limited, but I
7 think that conceivably does bear on the admissibility. So I
8 will allow that question.

9 A. I am really -- I don't know who Pryor Cashman -- I cannot
10 even tell you my lawyer for what -- I am not allowed to ask
11 questions, right? So I have no idea.

12 THE COURT: So that's the answer.

13 Anything else?

14 MS. CHAUDHRY: Proof of foundation problem with this
15 document.

16 THE COURT: So do I understand --

17 THE WITNESS: Wait. I know the answer.

18 MS. CHAUDHRY: Objection.

19 THE COURT: You don't have a pending question.

20 THE WITNESS: Oh, sorry.

21 THE COURT: Is this entire document something you sent
22 to Mr. Newkirk?

23 THE WITNESS: Yes.

24 THE COURT: Received.

25 (Government's Exhibit 2010 received in evidence)

Fc26new2

C.R. Darden - Cross

1 BY MR. ADAMS:

2 Q. Can I ask you to please turn to Tab 2 of this document.

3 Does that appear to be the same document that Ms.

4 Chaudhry showed you yesterday marked as 705?

5 A. It is.

6 Q. Why did you send it to Mr. Newkirk?

7 A. I sent -- I guess for his review. I sent all the documents
8 to Mr. Newkirk regarding the deal or any prospective lenders.

9 Q. Were you shown this document on cross-examination
10 yesterday?

11 A. This document, yes.

12 Q. Were you shown Government Exhibit 2010 yesterday?

13 A. I was not.

14 MR. ADAMS: No further questions.

15 THE COURT: Recross.

16 RECROSS-EXAMINATION

17 BY MS. CHAUDHRY:

18 Q. Mr. Darden, you were just shown Government Exhibit 2009
19 which refers to a conference call.

20 A. Yes.

21 Q. Was there a conference call?

22 A. I believe so, yes.

23 Q. Did you participate in it?

24 A. Maybe, maybe not. I am not certain.

25 Q. Is this something you would have participated in pretending

Fc26new2

C.R. Darden - Cross

1 to be your father?

2 A. No.

3 Q. So all of these people listed on this conference call group
4 knew that you were involved and --

5 MR. ADAMS: Objection, speculation.

6 THE COURT: Sustained.

7 Q. Did you participate in this conference call openly as
8 yourself?

9 A. I don't know that I participated on this conference call.
10 There were several conference calls with all these people that
11 I did not participate on, but I have spoken to every
12 individual. I have been on calls with every individual on this
13 list on a conference call as myself, not as my father.

14 Q. And any of these people that are also people you have been
15 calls with where you pretended to be your father?

16 A. Only Harvey.

17 Q. Mr. Darden, do you know an individual named Jim McMillan?

18 A. Jim McMillan?

19 Q. James McMillan?

20 A. I do.

21 Q. Is he a lawyer?

22 A. He is.

23 Q. Is he someone who you spent a lot of time in his office at
24 one point?

25 A. At one point, yes.

Fc26new2

C.R. Darden - Cross

1 Q. And while you were there, isn't it a fact that you had some
2 of your friends make phone calls pertaining to your father?

3 MR. ADAMS: Objection, scope.

4 THE COURT: Overruled.

5 A. I don't recall -- I don't necessarily recall that.

6 Q. Is it possible?

7 A. Is it possible that I had --

8 MR. ADAMS: Objection, speculation.

9 THE COURT: Sustained.

10 Q. Did you ever have friends of yours make phone calls
11 pretending to be your father?

12 MR. ADAMS: Objection, asked and answered.

13 THE COURT: I think it has been, but I will allow it
14 one more time.

15 A. Not that I recall.

16 Q. Did you ever tell Mr. McMillan that that is something you
17 did?

18 A. At one point James was -- I was going to hire James to be
19 my lawyer for the Maxim case so I am sure.

20 Q. Mr. Darden, you were just shown Government Exhibit 2010.

21 Do you have that in front of you?

22 A. I do.

23 Q. And this is an e-mail that you forwarded to Mr. Newkirk;
24 correct?

25 A. It is.

Fc26new2

C.R. Darden - Cross

1 Q. And if you read down e-mail in the middle it says, Harvey
2 attached are the final documents. Kyle.

3 There are several attachments in there. I pulled them
4 up so the jury can see how voluminous this is. These are all
5 documents drafted by Pryor Cashman; correct?

6 A. I don't know if all the documents were drafted by Pryor
7 Cashman. I have no idea.

8 Q. The document that the government just showed you that was
9 in your house --

10 MS. CHAUDHRY: What number was that?

11 MR. ADAMS: Defense 705.

12 Q. -- Defense 705. That is actually Attachment 3 that came
13 from Pryor Cashman; correct?

14 A. I believe so.

15 Q. You testified that Mr. Newkirk drafted that?

16 A. To my knowledge. If this whole thing came from Pryor
17 Cashman, it could be that Pryor Cashman drafted it. Most of
18 the documents Harvey drafted them for me. It is hard for me to
19 say. I cannot say exactly who drafted what.

20 Q. Mr. Darden, you said that when you first started meeting
21 with the government, the reason that you were lying to them is
22 that you were delusional and caught up in your own lies?

23 A. Probably.

24 Q. What do you mean by that?

25 A. I don't know. I think I just told so many lies that I kind

Fc26new2

C.R. Darden - Cross

1 of got swept up in my own lies.

2 Q. What did you mean by the word "delusional"?

3 A. I think t\at if you tell so many lies, you get swept up in
4 your lies. You get to the point where you start believing your
5 own lies. That to me is delusional.

6 Q. Are you at that point now?

7 A. I am not.

8 Q. But you were then?

9 A. I believe so.

10 Q. You were asked on redirect about the Merrill Lynch letter
11 that you submitted with Mr. Newkirk's name on it.

12 A. I was.

13 Q. And you said that there would be less liability if it was
14 in Mr. Newkirk's name; right?

15 A. So I was told.

16 Q. That letter was submitted along with an offer letter signed
17 by you pretending to be your father; right?

18 A. That's correct.

19 Q. That whole packet was submitted to the Bodman Law Firm and
20 Houlihan Lokey; correct?

21 A. That's correct.

22 Q. Houlihan Lokey is one of the investment banks for Maxim;
23 correct?

24 A. They were.

25 Q. Wasn't it your understanding that it was Houlihan Lokey's

Fc26new2

C.R. Darden - Cross

1 job to confirm the finances for this deal?

2 MR. ADAMS: Objection, relevance.

3 THE COURT: Overruled.

4 A. Was it my understanding that they were to confirm the
5 finances? Probably so.

6 Q. So they would be the ones who call the phone number for
7 Roderick Jones that you had to put in?

8 A. I don't know their diligence process.

9 MS. CHAUDHRY: Can we please show Mr. Darden GX 110.

10 Thank you, Ms. Marmet.

11 Q. Mr. Adams asked you to read the line that said FN. Could
12 you please read the line above it that says N, colon?

13 A. It says, Darden Cal.

14 Q. Your father goes by Cal?

15 A. We both go by Cal.

16 Q. You both go by Cal.

17 Mr. Darden, before you went to prison, didn't you go
18 by Ramarro?

19 A. That is my middle name. So I go by Calvin. I go by Cal.
20 Some people call my Ramarro. My family calls me Marro.

21 Q. Before you went to prison, didn't you widely introduce
22 yourself as Ramarro?

23 A. I think just -- before I sent to prison just as many people
24 knew me as Calvin or Cal knew me as Ramarro.

25 Q. In this deal all the documents we have seen, you don't

Fc26new2

C.R. Darden - Cross

1 refer to yourself ever as Ramarro?

2 A. I don't.

3 MR. ADAMS: Objection, mischaracterizes.

4 THE COURT: Sustained.

5 MS. CHAUDHRY: We can take that down. Thank you.

6 Q. You were asked on redirect about the employment letters
7 that Bryan Cave drafted?

8 A. Correct.

9 Q. Bryan Cave is a law firm; correct?

10 A. They are.

11 Q. They bill for their time; correct?

12 A. Believe so.

13 Q. And the law firm's bill was ultimately going be paid by the
14 Darden Media Group; correct?

15 A. I am sure.

16 Q. And isn't it your testimony that you were going to pay the
17 law firm to draft all of these employment letters only to fire
18 all of those people as soon as the deal went through?

19 A. It wasn't going to be as soon as the deal went through, but
20 it was going to be relatively soon after. So like I previously
21 explained, so there was going be transition period up. Once we
22 got through that transition period, we were going to fire most
23 of the highly paid ones and replace them. So that is correct.

24 Q. You testified on redirect about Mr. Newkirk's interest in
25 Reign; correct?

Fc26new2

C.R. Darden - Cross

1 A. That's correct.

2 Q. Reign did not acquire Maxim, did it?

3 A. It did not.

4 Q. In fact, all the documents on the Maxim sale after the
5 offer letter are done in the name of Darden Media Group; isn't
6 that correct?

7 MR. ADAMS: Objection, mischaracterizes.

8 THE COURT: Sustained as to form.

9 Q. You were signing the documents pretending to be your father
10 for Darden Media Group; correct?

11 A. I was.

12 Q. Those were the documents that were actually for the
13 purchase of the Maxim Magazine; correct?

14 A. Yes.

15 Q. And the personal guarantee was done under Darden Media
16 Group, Calvin Darden Senior?

17 A. Yes.

18 Q. The loan with Mr. Weinberg was done under Darden Media
19 Group and Calvin Darden Senior?

20 A. I believe so.

21 Q. The loan with Open Gate, same thing, Darden Media Group and
22 Calvin Darden Senior?

23 A. Yes.

24 Q. All these potential lenders and investors, all of those
25 documents were done Calvin Darden Senior, Darden Media Group?

Fc26new2

C.R. Darden - Cross

1 A. That's correct.

2 Q. And there is no document that you signed that said that
3 Reign owns Darden Media Group, is there?

4 A. I am not -- I don't -- I am not sure. I don't know if
5 there -- I didn't even create Darden Media Group so I
6 couldn't -- I can't tell you. I really have no idea. As a
7 matter of fact, I believe in the offer letter it says Reign
8 or -- it mentions a subsidiary and says Darden Media Group or
9 Darden Media Holdings if my memory serves me correctly.

10 Q. The asset purchase agreement that you signed is for Darden
11 Media Group; correct?

12 A. Yes.

13 Q. And Reign is not on there anywhere?

14 A. I don't believe so.

15 Q. You testified about the HNewKirk1 G-Mail account that you
16 created for Mr. Newkirk; correct?

17 A. Correct.

18 Q. And you started meeting with the government in April of
19 2014; right?

20 A. That sounds correct.

21 Q. That is about a month after you were released?

22 A. Sounds correct.

23 Q. And we talked on cross about how by August the government
24 had agreed to release you from home confinement also; right?

25 A. Again, I don't know if the government had agreed to it or

Fc26new2

C.R. Darden - Cross

1 not. The judge agreed to it. So I am not sure whether -- I
2 have no idea.

3 Q. You were off home confinement by August of 2014?

4 A. I was.

5 Q. And you met with the government throughout 2014; is that
6 correct?

7 A. Probably.

8 Q. And through -- we're almost at the end of 2015, but
9 throughout 2015 also?

10 A. I would not say I met with them throughout two years. No,
11 I would not say that throughout.

12 Q. Have you met with them this year?

13 A. I have.

14 Q. How many times?

15 A. Several. I couldn't tell you how many.

16 Q. Isn't it a fact that the first time you told the government
17 about this e-mail account that you created for Mr. Newkirk was
18 September of this year?

19 A. Actually, they made me aware of it. So I wasn't even -- I
20 wasn't even aware of it.

21 Q. You never told them about it?

22 A. I didn't.

23 Q. And that is the meeting that you were discussing with Mr.
24 Adams and you went into that account?

25 A. That's correct.

Fc26new2

C.R. Darden - Redirect

1 Q. And you remembered the password for that account?

2 A. No. We actually had -- I had to reset the password because
3 I couldn't remember it. I reset it and it sends you a link to
4 put in a new password. We put in a new password so we could go
5 in there and see what was there and what wasn't there.

6 Q. Mr. Darden, you said there was nothing in the "sent"?

7 A. That's correct.

8 Q. Nothing in the "received"; is that correct?

9 A. That's correct.

10 Q. Mr. Darden, you do know how to delete e-mails, don't you?

11 A. There was nothing in the "trash" either.

12 Q. Do you know how to delete e-mails?

13 A. I do.

14 Q. Do you know how to empty the trash?

15 A. I do. But if I was going to delete it, I would have
16 deleted the e-mail that actually showed that an e-mail was set
17 up so...

18 MS. CHAUDHRY: Nothing further.

19 THE COURT: Anything else?

20 MR. ADAMS: Two questions, your Honor.

21 REDIRECT EXAMINATION

22 BY MR. ADAMS:

23 Q. Mr. Darden, you were discussing the conference call and the
24 e-mail that sets up the conference call on January 2014.

25 Do you recall that?

Fc26new2

C.R. Darden - Redirect

1 A. I do.

2 Q. You testified a moment ago that the only person who had
3 been on the phone call with you amongst those people at the
4 conference call who had experienced you impersonate your father
5 was Harvey Newkirk?

6 A. That's correct.

7 Q. In the instances when you had impersonated your father
8 while Mr. Newkirk was on the line, was it with the intent of
9 fooling Mr. Newkirk?

10 A. It was not.

11 Q. What was the intent?

12 A. To fool whomever else was on the line.

13 Q. Was the call to --

14 MS. CHAUDHRY: Objection, outside the scope.

15 THE COURT: I can't tell until I hear the answer.

16 MR. ADAMS: For the reporter the question was: Was
17 the call to Mark Hughes at Comvest one such example of such a
18 call?

19 THE COURT: I am sorry. I didn't see the full
20 question on the screen.

21 Overruled.

22 A. It was.

23 MR. ADAMS: Can we please publish Government
24 Exhibit 601. Can we go to the second page, please.

25 Third page. Zoom in on the bottom half of that first

Fc26new2

C.R. Darden - recross

1 full paragraph.

2 Q. Mr. Darden, was Darden Media Group affiliated with The
3 Reign Entertainment Group?

4 A. It was.

5 Q. Was The Reign Entertainment Group going to be acquiring
6 Maxim?

7 A. It was.

8 Q. Or some other entity?

9 A. It was going to be a subsidiary -- well, according to this
10 document, The Reign Entertainment Group and its affiliates
11 Darden Media through a subsidiary of Darden Media Group to
12 acquire all of the businesses.

13 Q. Who had responsibility for setting up the subsidiary at
14 Reign Entertainment Group?

15 A. Harvey.

16 MR. ADAMS: No further questions.

17 RECROSS-EXAMINATION

18 BY MS. CHAUDHRY:

19 Q. Mr. Darden, two questions. You were just shown a brief
20 snippet by the government.

21 You are not a lawyer; correct?

22 A. I am not.

23 Q. You are not a transactional lawyer then?

24 A. Certainly not.

25 Q. You don't know the legal definition of "affiliate," do you?

Fc26new2

C. R. Darden - recross

1 A. I don't.

2 THE COURT: Anything else?

3 REDIRECT EXAMINATION

4 BY MR. ADAMS:

5 Q. Could you have pulled off this fraud without a lawyer?

6 A. Absolutely not.

7 RECROSS-EXAMINATION

8 BY MS. CHAUDHRY:

9 Q. Mr. Darden, how many frauds have you pulled off without a
10 lawyer?

11 MR. ADAMS: Objection, scope.

12 THE COURT: I will allow that, but that opens certain
13 doors.

14 MS. CHAUDHRY: Can I rephrase the question?

15 THE COURT: Yes.

16 Q. Did you use a lawyer in your MBA fraud that you plead
17 guilty to?

18 A. I did.

19 Q. Was your lawyer part of that fraud?

20 A. Was the lawyer part -- well, maybe. Yeah. Yes.

21 Q. Who is that lawyer?

22 MR. ADAMS: Objection, relevance.

23 THE COURT: I am going to sustain but not on relevance
24 grounds but on 403 grounds.

25 Q. Your prior frauds that you went to prison for in all the

Fc26new2

C. R. Darden - recross

1 fraud you pulled on your three employers, was a lawyer involved
2 in any of those?

3 A. No. Those didn't require a lawyer.

4 Q. The frauds that you pulled on your clients and stole their
5 money, was a lawyer involved in those?

6 A. Same case, no.

7 MS. CHAUDHRY: Nothing further.

8 THE COURT: Anything else?

9 MR. ADAMS: No.

10 THE COURT: Thank you very much. You may step down.

11 (Witness excused)

12 THE COURT: Please call your next witness.

13 MS. PAUL: The government calls Shaul Greenwald.

14 MS. CHAUDHRY: Your Honor, do I need to take the
15 binder back?

16 THE DEPUTY CLERK: Do you prefer to swear or affirm?

17 THE WITNESS: Affirm.

18 SHAUL GREENWALD,

19 called as a witness by the Government,

20 having affirmed, testified as follows:

21 THE DEPUTY CLERK: State your name and spell it slowly
22 for the record.

23 THE WITNESS: Shaul, S-h-a-u-l, Greenwald,
24 G-r-e-e-n-w-a-l-d.

25 THE COURT: Counsel.

Fc26new2

Greenwald - direct

1 MS. PAUL: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY MS. PAUL:

4 Q. Good morning, Mr. Greenwald.

5 A. Good morning.

6 Q. Where are you employed?

7 A. Riverside Abstract.

8 Q. What type of business is that?

9 A. It's a title insurance agency.

10 Q. What is your position at Riverside Abstract?

11 A. I am a CEO.

12 Q. Let me direct your attention now to December of 2013. Did
13 there come a time in December of 2013 when you were approached
14 about making a loan in connection with the purchase of Maxim
15 Magazine?

16 A. Yes.

17 Q. Briefly can you describe how you were first approached by
18 making that loan?

19 A. A client of mine called me. A client of mine called me and
20 mentioned that he wanted to to introduce me to someone through
21 a relationship that he had and asked me if I would meet with
22 the people. I said, Sure. We had a meeting in my office. I
23 believe it was the day after. We had some e-mail
24 correspondents prior to that. I believe we met in my office.

25 Q. Who did you meet with in your office?

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Greenwald - direct

1 A. At the time I had met with Calvin Darden Junior and the
2 defendant.

3 Q. And at that meeting did the defendant and Calvin Darden
4 Junior explain the deal to you?

5 A. Yes.

6 Q. What did they explain about it?

7 A. They explained that they were purchasing Maxim magazine and
8 some other assets that were along with the magazine and they
9 needed a short -- a short-term loan associated with that
10 purchase.

11 MR. HARRIS: Your Honor, objection to "they."

12 THE COURT: Sustained.

13 Q. How much money were you contemplating lending,
14 Mr. Greenwald?

15 A. If I recall about \$5 million was the request.

16 Q. At this meeting did Mr. Newkirk tell you anything about the
17 role of someone named Calvin Darden Senior in the deal?

18 A. At the meeting we discussed Calvin Darden Senior, yes.

19 Q. What, if anything, did Mr. Newkirk tell you about
20 Mr. Darden Senior and his role in the deal?

21 A. We were talking about Calvin Darden Junior and Calvin
22 Darden Senior going into a deal together and they were -- that
23 was the basic information about the deal and they wanted me to
24 be part of the deal and be involved in the deal.

25 Q. Did Mr. Newkirk describe Mr. Darden Senior's background to

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Greenwald - direct

1 you?

2 A. Yes.

3 Q. And what did he say about it?

4 A. He said that he was a -- he lived out if I remember
5 correctly in Atlanta, Georgia and he had a lot -- he was on
6 board of a bunch of different companies, a few companies that
7 he mentioned at the time. He was a -- if I remember correctly
8 he was on the board of directors of Coca-Cola International,
9 Target -- Target Corporation and a health care company. I
10 believe it was Cardinal Health.

11 Q. At this meeting was there any discussion about how your
12 loan for the deal would be secured?

13 A. We spoke about a number of things, but the company -- the
14 company itself, Maxim itself would be some sort of collateral
15 and we also spoke about somehow collateralizing the shares that
16 Mr. Calvin Darden Senior had at his disposal and some sort of a
17 collateral against those shares.

18 Q. Did Mr. Newkirk tell you that Mr. Darden Senior was willing
19 to put up his stocks as collateral?

20 A. Yes.

21 Q. Was it important to you to have your loan secured by that
22 collateral?

23 A. Yes.

24 Q. Why was that important?

25 A. I didn't know much about the magazine and, you know, the

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Greenwald - direct

1 environment of the Internet. I didn't feel that was
2 necessarily the collateral I was interested in; but in the
3 interest of doing the deal and making a return -- a pretty
4 quick return was promised to me -- on our investment, the
5 collateral I was most interested in was stock of a -- of those
6 companies, which were pretty strong.

7 Q. Had you learned that Mr. Darden Senior was not involved in
8 the deal, would you have continued to consider making a loan?

9 A. I don't believe so.

10 Q. Why not?

11 A. Well, really the only collateral that we had was the -- was
12 the stock and the -- the stocks and the -- of those few
13 companies. So we weren't really looking at the deal as far as
14 the actual magazine or any of the assets that were coming along
15 with that. Although that was potentially part of the
16 collateral, that was not our main address.

17 MS. PAUL: May I approach, your Honor?

18 THE COURT: Yes.

19 Q. Mr. Greenwald, I am handing you a binder of documents.
20 They are government exhibits that are in evidence. I will be
21 asking you to turn to particular ones. Okay?

22 A. Sure.

23 Q. Please take a look at Government Exhibit 802.

24 A. Yes.

25 Q. Do you recognize that document?

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Greenwald - direct

1 A. Give me one moment.

2 Yes.

3 Q. What is it?

4 A. There are various e-mails between myself, Harvey Newkirk
5 and Calvin Darden regarding the -- regarding this potential
6 loan.

7 Q. When you say Calvin Darden, which Calvin Darden are you
8 referring to?

9 A. If I am correct about it, I believe it was Calvin Darden
10 Junior.

11 Q. What is the date of this e-mail exchange?

12 A. The date starts Thursday, December 12th of 2013 and it
13 continues throughout Thursday, December 12th.

14 Q. If we can turn to the last page of the document, please.

15 A. Sure.

16 Q. If we can take a look at the last e-mail there from Mr.
17 Newkirk -- actually on the second to last page.

18 A. Uh-huh.

19 Q. That is where it begins.

20 A. Sure.

21 Q. Do you see that e-mail from Mr. Newkirk?

22 A. Yes.

23 Q. To you?

24 A. Yes, I do.

25 Q. If we can go back to the last page, please.

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Greenwald - direct

1 A. Yes.

2 Q. This is a reference to an e-mail made by Mr. Newkirk to
3 Calvin Darden Senior being responsible for the balance of 13.9
4 million plus transaction expenses at the closing.

5 Do you see that?

6 It is also up on your screen if that is more
7 convenient for you.

8 A. Yes. Yes, I do.

9 Q. Did Mr. Newkirk ever tell you where that \$13.9 million was
10 going to come from?

11 A. I don't recall.

12 Q. And in this e-mail, if we can go back to the page before,
13 Mr. Newkirk also makes a reference to -- he states in this
14 e-mail, Holdings paid \$3.1 million deposit previously paid.

15 Do you see that?

16 A. Yes, I do.

17 Q. Did you have any understanding as to where the 3.1 million
18 deposit had come from?

19 A. No.

20 Q. Did Mr. Newkirk ever tell you that there was existing
21 litigation with respect to the \$3.1 million?

22 A. No.

23 Q. Did Mr. Newkirk ever tell you about another lender to the
24 deal by the name of Open Gate Capital?

25 A. No.

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Greenwald - direct

1 Q. Turning to the first page of the document, please, and
2 focusing on that top e-mail from Mr. Newkirk, let me know when
3 you got that.

4 A. Yes.

5 Q. Did Mr. Newkirk tell you that Mr. Darden Senior was willing
6 to resign from the boards of the companies on which he held
7 stock if necessary?

8 A. That was our understanding, yes.

9 Q. Please take a look at Government Exhibit 803 in evidence.

10 A. Sure.

11 Q. Focusing on the top e-mail from you dated December 12th,
12 2013, to Mr. Newkirk, do you see that?

13 A. Yes, I do.

14 Q. Who did you copy on this e-mail?

15 A. I retained at that point attorneys who I worked with in the
16 past at a firm named Morris & Cohen, specifically it was a
17 Eitan Tabak.

18 Q. And there is an e-mail address that you copied to
19 CRDarden@DardenDevelopment.com. Do you see that?

20 A. Yes, I do.

21 Q. Whose e-mail address did you believe that to be?

22 A. Mr. Darden Senior.

23 Q. Why did you copy that e-mail address on your e-mail there?

24 A. One of the point of the mechanism as far a security would
25 be his shares and his potential guarantees and I wanted to make

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Greenwald - direct

1 sure he was involved in the conversation.

2 Q. Now, you list a number of things in your e-mail that you
3 want a securities for your loan -- securities within the buying
4 entity, personal guarantee, stock interest, a mechanism force
5 of sale, as well as a deed to Mr. Darden's home or second
6 mortgage.

7 Do you see that?

8 A. Yes.

9 Q. Why did want those things as a security for your loan?

10 A. As a lender we're trying to secure ourself to the best of
11 our ability to make sure we don't have -- that we have as low
12 risk as possible. So as much as we were told what we could
13 get, we would try to get as much interest as possible.

14 Q. Did Mr. Newkirk tell you that these were things that
15 Mr. Darden Senior was willing to put up as collateral?

16 A. Yes.

17 Q. Please take a look at Government Exhibit 804.

18 When is the date e-mail to Mr. Newkirk?

19 A. It is the next day, December 13th, 2013.

20 Q. And what is attached to the e-mail?

21 A. This was a term sheet that pretty much gave the terms of
22 potential financing for this transaction.

23 Q. If we can turn to the second page of the attachment and
24 focus on where it says "guarantor collateral."

25 Do you see that, Mr. Greenwald?

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Greenwald - direct

1 A. Yes, I do.

2 Q. What is listed here?

3 A. Guarantor collateral. Parent pledges equity in borrower,
4 Calvin Darden Senior pledges primary residence in Georgia and
5 proceeds of equity grants (including options) in Coca-Cola,
6 Cardinal Health and Target.

7 Q. What does "equity in the borrower" mean?

8 A. Equity in borrower to my recollection -- the borrower in
9 this scenario is Darden Media Group, LLC, and that would be the
10 purchaser I believe or in some aspect it would be the purchase
11 of the actual magazine. So we were looking for the cause of
12 pledge of equity in the actual asset.

13 Q. Would you have been willing to rely on equity in the
14 borrower as the sole collateral for this loan?

15 A. No.

16 Q. Why not?

17 A. We didn't really think there was value to it.

18 Q. And focusing on the section of this term sheet that says
19 "intercreditor arrangements," do you see that?

20 A. Yes.

21 Q. It says here that lender will be senior to all other
22 indebtedness of the borrower and parent and any junior lenders
23 will enter into subordination agreement with lender.

24 What did that mean, Mr. Greenwald?

25 A. When making a loan, you want to make sure that even if

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Greenwald - direct

1 there are borrowing other funds potentially that you just want
2 to make sure you're as secure as possible, that any other
3 indemnities or any other loans or anything they owed to anyone
4 else you would be senior to them and you would be in first
5 position in order to receive any of those collateral pledges.

6 Q. If the collateral had been promised to another lender,
7 would you have wanted to know that?

8 A. Yes.

9 Q. Why?

10 A. Again, you're -- our understanding is that we're lending
11 money and we would have the ability to collect and be in first
12 position under those loans. You don't want there to be too
13 much -- too much money outstanding when someone is going into a
14 deal and you want to make sure that you're money is as secure
15 as possible.

16 Q. Mr. Greenwald, do you need water?

17 A. I should be fine.

18 Q. Did there come a time when you asked to speak to Mr. Darden
19 Senior?

20 A. I don't recall if I asked to speak to him, but I definitely
21 spoke to him at some point.

22 Q. Did you speak to that person on the phone?

23 A. I spoke to someone who purported to be Calvin Darden
24 Senior.

25 Q. Just to be clear was that over the phone?

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Greenwald - direct

1 A. I am sorry.

2 Q. Just to be clear that was over the phone?

3 A. Yes. We never met in person.

4 Q. Can you describe that conversation or conversations?

5 A. I don't recall. I definitely recall having a least one
6 conversation and I don't know if there were more or others were
7 potential texts. I believe a few conversations. We spoke
8 about the deal itself, about how we would be getting more
9 information if we would like to feel more comfortable with the
10 deal and whatever I would need to get this done. Especially we
11 spoke about Coca-Cola and Target and at one point I recall he
12 told me he was coming to New York and maybe we would get to
13 together and meet, which didn't pan out. But we definitely
14 spoke about many different aspects of the deal, family, other
15 aspects of just general conversation as well. But mostly about
16 the deal and just trying to get me comfortable to get into this
17 deal and make it happen. It is very important to him to make
18 this deal happen.

19 Q. Sitting here today do you know whether the person you spoke
20 to over the phone was actually Calvin Darden Senior?

21 A. I don't know.

22 Q. What phone numbers were you using at that time?

23 A. Likely either my office phone or my cell phone.

24 Q. What is your office number?

25 A. 718-252-4200.

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Greenwald - direct

1 Q. What are the last four digits of your cell phone number?

2 A. 2729.

3 Q. Did there come a time in mid to late December when the deal
4 fell apart?

5 A. Yes.

6 Q. What do you recall about that?

7 A. I recall that it didn't happen. I recall there were some
8 news report of it not happening as well. I believe I read an
9 article about it at that time and basically that was pretty
10 much the end of the deal.

11 Q. Directing your attention now to late January of 2014, do
12 you recall the conversation about you making a loan restarting
13 around that time?

14 A. Yes, I do.

15 Q. What, if anything, do you recall about how that
16 conversation restarted?

17 A. I don't recall exactly. I just remember there was a --
18 either e-mail or phone call that the deal is back on. For
19 whatever reason the deal fell apart. Could have been that they
20 had a contract and missed the deadlines. And they would like
21 to restart the conversation to see if they can get this loan
22 back on the table.

23 Q. Please take a look at Government Exhibit 812.

24 A. Sure.

25 Q. What is the date of this e-mail exchange, Mr. Greenwald?

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Greenwald - direct

1 A. It seems all February 6th, 2014.

2 Q. Do you recall sending money to an escrow account around
3 this time in connection with the Maxim deal?

4 A. Yes, we does.

5 Q. Approximately how much money did you send to the escrow
6 account?

7 A. If I recall \$3 million or is it 4 million.

8 Q. Where was the escrow account being held?

9 A. It was held at a law firm.

10 Q. Do you remember which one?

11 A. If I remember, I believe Pryor Cashman.

12 Q. Why did you send the money to an escrow account at Pryor
13 Cashman?

14 A. Sometimes when you are involved in deals, the borrower
15 wanted to feel secure that they are not going to go down the
16 road and being left without having funds available to them when
17 they need it. So we felt we had a prior relationship with
18 Pryor Cashman with a couple people there and we felt pretty
19 secure that the money would be held in escrow and we had escrow
20 agreements to that extent. In order to make them comfortable,
21 we gave them a time period to get certain parts of our deal
22 that we needed to get comfortable went. We think we gave them
23 a 24-hour period or maybe some form of that to get us
24 comfortable and that is how -- that is -- we sent -- we sent
25 funds at that point.

Fc26new2

Greenwald - direct

1 Q. When you say "to get us comfortable," when sort of comfort
2 were you seeking?

3 A. I think we were very uncomfortable with the deal itself as
4 far as exactly if the deal was actually still up and running,
5 if there was actually going be a closing, if we actually were
6 able to get securities as far as what we were required --
7 basically at that point mostly the shares that we were talking
8 about originally.

9 Q. The shares of Mr. Darden Senior?

10 A. Yes.

11 Q. And you mentioned that the escrow account that you sent the
12 money to was at Pryor Cashman. Did the location of the escrow
13 account make a difference to you?

14 A. Sure.

15 Q. Why?

16 A. Well, we generally won't send any funds to someone we don't
17 have a relationship with or a law firm that is not a well
18 known, prestigious law firm. In this case we happened to have
19 both. Pryor Cashman is a very prestigious law firm. In
20 addition, I had a relationship with the person that was being
21 involved in escrow there.

22 Q. Did Mr. Newkirk make you aware of any past issue or
23 problems in the Maxim deal involving money that had been sent
24 to an escrow account at a law firm?

25 MR. HARRIS: Objection, your Honor, relevance.

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Greenwald - direct

1 THE COURT: Overruled.

2 You may answer.

3 A. Can you repeat the question.

4 Q. Yes.

5 Did Mr. Newkirk make you aware of any past issues or
6 problems in the Maxim deal involving money being sent to an
7 escrow account at the law firm?

8 A. No.

9 Q. Did he ever tell you about a lender by the name of Mark
10 Weinberg?

11 A. I don't recall.

12 Q. Please take a look at Government Exhibit 814. I would like
13 to direct your attention to the e-mail from you, which is the
14 second one from the top. If we can focus in on that, please.

15 Do you see that e-mail?

16 A. Which one am I focusing on?

17 Q. The second one from the top on first page, an e-mail from
18 you dated February 7th.

19 A. Yes, I do.

20 Q. Now, you say in this e-mail that you feel you're not
21 getting the full picture of what is happening.

22 What did you mean by that?

23 A. Like I mentioned I feel that we got this deal back on, part
24 of our requirements and our, I guess, notices of actually
25 funding this deal was we really -- we really didn't feel there

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Greenwald - direct

1 was a deal potentially that was actually happening. We weren't
2 sure whether that was happening. We were being told it was
3 happening, but we weren't getting a lot of information. The
4 deal seemed to have canceled at one point or at least was
5 definitely teetering on cancellation and it was being
6 reinstated. We wanted to know the deal was reinstated and the
7 deal was actually happening.

8 Q. What ultimately happened with the money that you sent to
9 the escrow account at Pryor Cashman?

10 A. We requested for the money to come back for us.

11 Q. Why did you ask for the money back?

12 A. We didn't feel comfortable that the deal was happening. We
13 told them that, I recall, if the deal ever comes back and if we
14 can get comfortable, we may entertain the deal again, but right
15 now we're just not comfortable.

16 Q. Did you ever authorize the release of your moneys to the
17 seller of Maxim?

18 A. No.

19 Q. After you received your money back from the Pryor Cashman
20 escrow ask was that the end of your involvement in the Maxim
21 deal?

22 A. I believe so.

23 MS. CHAUDHRY: One moment.

24 MS. PAUL: No further questions.

25 THE COURT: Counsel, let me ask so I know whether to

Fc26new2

Greenwald - direct

1 give the jury their break now or later. About roughly how long
2 do you expect to be?

3 MR. HARRIS: 20, 25 minutes.

4 THE COURT: Ladies and gentlemen, we'll give you your
5 midmorning break now. We'll resume in 15 minutes.

6 (Jury excused)

Fc26new2

Greenwald - direct

1 (In open court; jury not present)

2 THE COURT: Please be seated. You may recall that
3 Juror No. 1 comes from quite some distance had previously sent
4 us a note in which he was concerned both about expenses he was
5 incurring and also about care for his children because in order
6 to be here on time he had to stay over in Manhattan and you
7 will recall that I indicated to him that I would talk to his
8 employer. I did. I had two very excellent conversations with
9 his employer and the financial concerns were obviated.

10 But this morning we received another note from him
11 that says as follows: Starting next week I will have no one to
12 watch my children in the morning. I checked train schedules
13 and I think I can get here by 10:20-10:30.

14 So I don't know what we're going to do about that, if
15 anything. We'll see how we're proceeding in terms of the time
16 it takes to finish the case. I wanted to flag that note for
17 you so you can start thinking about that. We do still have one
18 alternate. On the other hand Juror No. 1 has, as the note
19 indicates, indicated his desire to try to work things out so
20 that he can continue to serve. So I just raise it for your
21 consideration. We'll take that up later depending how things
22 go whether there is a need to do anything.

23 Yes, ma'am.

24 MR. HARRIS: Your Honor, I just wanted to flag for you
25 one issue to discuss with you today.

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Greenwald - direct

1 THE COURT: I am sorry?

2 MR. HARRIS: I just wanted to flag for you that we
3 have one issue to discuss with you today. It does not involve
4 Mr. Greenwald. It does not need to be done now. I just wanted
5 to make sure --

6 THE COURT: What is the issue?

7 MR. HARRIS: May I do it at side bar, your Honor.

8 THE COURT: Yes.

9 (Continued on next page)

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Fc26new2

Greenwald - direct

1 (At the side bar)

2 MR. HARRIS: Your Honor, in anticipation of
3 Mr. Newkirk's testimony, I had discussed with the government
4 questions that I might have and getting their opinion whether
5 they thought it would open the door, and they thought that
6 Mr. Newkirk testifying opened the door. I said I didn't
7 understand that to be --

8 THE COURT: I haven't ruled on that one way or the
9 other. So I agree we need to discuss that. I am not prepared
10 to discuss it until you tell me that it makes a difference.
11 Otherwise, it is just an advisory opinion.

12 MR. HARRIS: I understand.

13 THE COURT: So if you decide by the end of today that
14 he will definitely take the stand unless it opens the door -- I
15 assume we're talking about the boxing deal?

16 MR. HARRIS: That's correct, your Honor.

17 THE COURT: -- or you conclude that he will definitely
18 take the stand regardless or whatever, then I will take it up.
19 I am not going to waste my time until I know whether it is
20 material in effect.

21 MR. HARRIS: Just wanted to flag it.

22 THE COURT: Very good. Thanks a lot.

23 (In open court)

24 THE COURT: We'll see you all in a few minutes.

25 (Recess)

FC2VNEW3

Greenwald - cross

1 (Jury present)

2 THE COURT: Counsel.

3 MR. HARRIS: Thank you, your Honor.

4 CROSS-EXAMINATION

5 BY MR. HARRIS:

6 Q. Good morning, Mr. Greenwald. By name is Jon Harris. I
7 represent Harvey Newkirk. We spoke about a week or so ago.

8 A. Correct. Good morning.

9 Q. Mr. Greenwald, you testified you're an attorney. What kind
10 of attorney are you?

11 A. I testified that I'm CEO of a company and I am attorney.

12 Q. Sorry.

13 A. I actually practice -- don't practice law per se, but I'm
14 involved with a company that deals with some sort of practical
15 law, real estate law.

16 Q. You testified that you were introduced to this transaction
17 by someone you knew in December 2013.

18 A. Yes.

19 Q. Do you recall who that person was?

20 A. I got through them through a fellow named Joel Schreiber
21 who introduced me to a company called Forefront Capital, I
22 believe.

23 Q. Had you ever done any business with Forefront before?

24 A. Not that I recall.

25 Q. Am I correct that your interest was in making a short-term

FC2VNEW3

Greenwald - cross

1 secured loan?

2 A. Yes.

3 Q. Am I also correct that you had no interest in Maxim as a
4 business?

5 A. No, it was no interest.

6 Q. And the government showed you a term sheet which is
7 Government Exhibit 804.

8 Do you have the exhibits in front of you?

9 A. Yes. Yes, I do.

10 MR. HARRIS: Can you put Government Exhibit 804 up.
11 If we could look at the first page of the email.

12 Q. That is from Eitan Tabak; is that correct?

13 A. Yes, it is.

14 Q. Mr. Tabak was your attorney on this deal; is that right?

15 A. Yes.

16 Q. This is a term sheet for the -- can I call it the first
17 iteration? There was a deal on the table maybe in December, it
18 went away, and then it came back in January?

19 A. Correct.

20 Q. All right. So this is a term sheet for the first iteration
21 of the deal, right?

22 A. Yes.

23 MR. HARRIS: If we can go now to the term sheet,
24 please, first page of the term sheet.

25 A. Yes.

FC2VNEW3

Greenwald - cross

1 Q. Thank you.

2 There was going to be a loan of \$5 million; is that
3 right?

4 A. Yes.

5 Q. And fair to call that -- if we just go down, that was going
6 to be due -- the idea was that it would be repaid within 14
7 days of closing; is that right?

8 A. Correct.

9 Q. That's a short-term loan?

10 A. Very short-term.

11 Q. And your concern is that your loan gets paid back with
12 interest.

13 A. Correct.

14 Q. Could you just explain to the jury what the difference
15 is --

16 MR. HARRIS: You can take down 804 please.

17 Q. Can you explain for the jury what's the difference between
18 a secured loan and an unsecured loan.

19 A. Unsecured loan may be something which you may lend to
20 anyone, but particularly a friend or someone you may trust.
21 And you may lend them a small amount of money or a large amount
22 of money; but it's not secured by anything specific, it's just
23 basically based on the person's word and their goodwill and
24 maybe have documents between each other, but nothing specific
25 that you're attaching your interest to.

FC2VNEW3

Greenwald - cross

1 Q. And a secured loan?

2 A. Secured loan would be -- a standard secured loan may be
3 where there's a business that you collateralize or real estate
4 that you may collateralize with mortgage on a property, other
5 assets. Someone may have stocks, bonds, collateral that may be
6 available.

7 Q. So that if the loan is not repaid back, you get to try to
8 collect against the collateral.

9 A. Correct.

10 Q. Kind of like a loan on a house would be a secured loan.

11 A. Correct.

12 Q. You testified that you met with Calvin Darden Junior; is
13 that right?

14 A. Yes.

15 Q. And you also spoke with him?

16 A. Yes.

17 Q. I'm going to hand you two exhibits.

18 MR. HARRIS: Your Honor, may I approach?

19 THE COURT: Yes.

20 MR. HARRIS: I'm going to hand the exhibit -- what's
21 been marked for identification as Defense Exhibit 426 and 427.

22 Q. If you could please look at 426 and 427.

23 Those are both, am I correct, emails from Calvin
24 Darden to yourself on December 12th, 2013?

25 A. Yes.

FC2VNEW3

Greenwald - cross

1 MR. HARRIS: Your Honor, I offer 426 and 427.

2 MS. PAUL: No objection.

3 THE COURT: Received.

4 (Defendant's Exhibits 426, 427 received in evidence)

5 MR. HARRIS: Can we please put up Exhibit 426.

6 I need Defendant's Exhibit 426. I'm sorry, that was
7 my fault.

8 Q. I'll go ahead and ask you about it.

9 Do you need a moment to look through it,
10 Mr. Greenwald?

11 A. Yes, please.

12 Q. Sure. Take your time.

13 A. Okay.

14 Q. You've had an opportunity to look through it?

15 A. Yes, I did.

16 Q. Am I correct that Defense Exhibit 426 is a collateral
17 worksheet that was sent to you by Calvin Darden?

18 A. It seems so, yes.

19 Q. Did you understand that to be Darden Senior or Junior?

20 A. I don't recall from the email. I don't recall from the
21 context.

22 Q. The attachment is a worksheet of collateral; is that right?

23 A. Yes.

24 Q. If you just go back to page 1 of the email. That worksheet
25 is being forwarded to you. It's something that Forefront had

FC2VNEW3

Greenwald - cross

1 sent and that is being forwarded on to you; is that right?

2 A. Yes.

3 Q. And on the email forwarding it to you, Mr. Newkirk is not
4 on that email, right?

5 A. The email forwarded to me, he's not on it; correct.

6 MR. HARRIS: Can we look at Defendant's Exhibit 427 in
7 evidence.

8 A. Yes.

9 Q. And that's an email from Mr. Darden to yourself?

10 A. Yes, it is.

11 Q. Do you recall which Mr. Darden?

12 A. I would assume it would be Calvin Darden Senior.

13 Q. And that attaches -- in any event, Mr. Newkirk is not on
14 it, whether it's from Junior or Senior, right?

15 A. Correct.

16 Q. And that attaches a Bank of America statement and then it
17 attaches a statement of shares in Coca-Cola Enterprises and
18 Cardinal Health; is that right?

19 A. Yes, it is.

20 Q. Now, we talked about the term sheet before and I showed it
21 to you, right?

22 A. Correct.

23 Q. That's a term sheet and that's not binding, right?

24 A. Correct.

25 Q. So if you don't get comfortable, you don't do the deal,

FC2VNEW3

Greenwald - cross

1 right?

2 A. Right.

3 Q. And if the other party doesn't like your terms or they
4 don't get comfortable, they don't do the deal?

5 A. That's correct.

6 Q. That's what you're asking for.

7 A. We're just trying to get the information down on paper.

8 MR. HARRIS: May I approach, your Honor?

9 THE COURT: Yes.

10 MR. HARRIS: I've handed the witness what's been
11 marked as Defendant's Exhibit 430 for identification.

12 Q. Am I correct that's an email from Harvey Newkirk dated
13 Saturday, December 14th, 2013, to Eitan Tabak and that you're
14 copied on it?

15 A. Yes, that's correct.

16 MR. HARRIS: Your Honor, I offer Defense Exhibit 430.

17 MS. PAUL: No objection.

18 THE COURT: Received.

19 (Defendant's Exhibit 430 received in evidence)

20 MR. HARRIS: Thank you, your Honor.

21 Could you please publish 430.

22 Q. This isn't the first iteration of the deal when you're
23 trying to get comfortable with the collateral, right?

24 A. Correct.

25 Q. And the main thing you wanted to get comfortable with was

FC2VNEW3

Greenwald - cross

1 the stock, you testified; is that right?

2 A. Well, it was amongst the few things in collateral, of
3 course.

4 Q. There's also real estate?

5 A. Well, there was real estate and there was the company
6 itself.

7 Q. So Mr. Newkirk sends your lawyer an email with yourself
8 copied saying: Because of the nature of the particular
9 securities, one cannot perfect a security interest in them
10 through the use of a control agreement. As a result, my best
11 idea is accompanied by the client to resign or seek permission
12 for a sales plan. And then he goes on. Is that right?

13 A. Yes. Correct.

14 Q. You were aware that there were restrictions on the shares;
15 correct?

16 A. I don't recall at this time. It seems that there was some
17 sort of restrictions, that's correct.

18 Q. And Mr. Newkirk is sending you an email about how to deal
19 with that?

20 A. Yes.

21 Q. And then the deal went away and it comes back in January;
22 is that right?

23 A. Sometime in late January, it seems, or February, yes.

24 Q. May I ask you please to turn to Government Exhibit 808.

25 A. Eight zero?

FC2VNEW3

Greenwald - cross

1 Q. Eight-zero-eight.

2 A. I don't have it.

3 Q. You don't have it?

4 A. I don't believe so.

5 Q. It's in evidence so it's on your screen. And if you can't
6 read it, I can give you my copy.

7 A. It's very hard to.

8 Q. I'll give you my copy.

9 MR. HARRIS: Your Honor, I have one thing highlighted
10 on my copy, but I don't care about the highlighting, if that's
11 okay with you.

12 THE COURT: That's fine.

13 Q. You testified before that you put the escrow at Pryor
14 Cashman; is that right?

15 A. Yes, I did.

16 Q. And that you had also had prior dealings with Pryor
17 Cashman?

18 A. Yes, specifically with Dennis Sughrue.

19 Q. Am I correct that the lawyer at Pryor Cashman on this deal
20 was a man named Dennis Sughrue. Do I have his name right?

21 A. I believe that's how you pronounce it, or Sughrue.

22 Q. If you go to the --

23 MR. HARRIS: If we can blow up the bottom email here.
24 It's a little hard.

25 Q. January 25th, 2014. And it's from Mr. Sughrue. And he

FC2VNEW3

Greenwald - cross

1 writes: Shaul -- that's your first name, right?

2 A. Correct.

3 Q. Eitan, please see attached a draft loan agreement, a note
4 for the Darden loan. The black line show changes from the
5 document that was prepared and previously contemplated a \$5
6 million loan. Please be in touch with any questions or
7 comments, Dennis.

8 Right?

9 A. Correct.

10 MR. HARRIS: And then can we see the email above that.

11 Q. And you write back: Dennis, always good to see you in a
12 transaction.

13 Is that right?

14 A. Correct.

15 Q. Who did you understand Mr. Sughrue to be representing in
16 this transaction?

17 A. I believed him to be representing the Dardens.

18 Q. He was not your lawyer, right?

19 A. Definitely not my lawyer.

20 Q. Do you know if Mr. Sughrue had an associate named Mr. Kyle
21 Miller who worked on the deal?

22 A. I don't recall.

23 MR. HARRIS: Can we just go up a couple in the email
24 chain.

25 Q. Just take a look at this.

FC2VNEW3

Greenwald - cross

1 MR. HARRIS: Can we go to the top please and the first
2 kind of half.

3 Q. If you look at the second email -- the first email says:
4 Attached is a guarantee. That's from Dennis Sughrue. And then
5 there's an email from Calvin Darden at the Reign and it's to
6 Dennis Sughrue at Pryor Cashman and then also to K. Miller at
7 Pryor Cashman.

8 Do you see that?

9 A. Yes, I see it.

10 Q. Mr. Miller worked with Mr. Sughrue?

11 A. I don't know.

12 Q. It appears that way?

13 A. Appears.

14 MS. PAUL: Objection.

15 THE COURT: Sustained.

16 MR. HARRIS: Can we please put up Government Exhibit
17 2010.

18 I'm sorry, I do not have a copy for you, but maybe the
19 government does.

20 May I approach, your Honor?

21 THE COURT: Yes.

22 Q. This document is in evidence, Mr. Greenwald.

23 Can you go please to the second page of the document.

24 A. Yes.

25 Q. The email at the bottom is from kylemiller@pryorcashman.com

FC2VNEW3

Greenwald - cross

1 to Mr. Tabak and to yourself, with a cc to Calvin Darden.

2 Do you see that?

3 A. Yes, I do.

4 Q. It says: Attached is a revised draft of the loan
5 agreement, a draft of the Darden Media Holdings pledge
6 agreement, etc.

7 A. Correct.

8 Q. If you go to the top email in that second page, it actually
9 starts on the bottom of page 1, if we could have the first
10 page.

11 A. Yes.

12 MR. HARRIS: I was just asking called up on the
13 screen, if we could have the first page called up on the
14 screen.

15 Thank you. I'm sorry.

16 Q. The one at the bottom is -- there's an email from Eitan
17 Tabak, and that's to yourself and Kyle Miller and Mr. Sughrue.
18 And it says: Kyle, can you please send me the revised
19 documents showing the cleanup changes we agreed on.

20 A. Yes, I see it.

21 Q. This is the second go-round; this is the loan documents
22 that are being worked on?

23 A. Seems so, yes.

24 Q. And in the course of working on that second loan, at some
25 point you sent \$3 million, is that right, to Pryor Cashman's

FC2VNEW3

Greenwald - cross

1 escrow?

2 A. Yes.

3 Q. And the second loan was a smaller amount. The first loan
4 contemplated had been five million, the second loan
5 contemplated for three million?

6 A. I believe so.

7 Q. And the deal never went through and you got your money
8 back; is that correct?

9 A. That's correct.

10 Q. Even after the deal never went through and you got your
11 money back, you still would have been willing to revisit doing
12 the deal had it come back to life; is that right?

13 A. Potentially we would have been, continued our discussions,
14 yes.

15 MR. HARRIS: One second please.

16 (Pause)

17 BY MR. HARRIS:

18 Q. Mr. Greenwald, do you recall how many calls you had with
19 the person you believed to be Calvin Darden Senior?

20 A. I don't recall, but a few, I believe.

21 Q. Did they sound like -- and you met with Calvin Darden
22 Junior, right?

23 A. Yes, I did.

24 Q. Did the person on the phone sound like the same person who
25 you met with?

FC2VNEW3

Greenwald - redirect

1 A. No.

2 MR. HARRIS: I have no further questions.

3 THE COURT: All right.

4 Redirect.

5 MS. PAUL: Yes.

6 Could we bring up Defense Exhibit 426 please.

7 REDIRECT EXAMINATION

8 BY MS. PAUL:

9 Q. Do you have Defense Exhibit 426, Mr. Greenwald?

10 A. Yes, I do.

11 Q. Can you take a look at the bottom email on the first page
12 please.

13 A. Yes.

14 Q. Is Mr. Newkirk copied on that email?

15 A. Yes, he is.

16 Q. This is the email that forwards around the collateral
17 worksheet; is that right?

18 A. Correct.

19 Q. So that's attached to this email that Mr. Newkirk is copied
20 on?

21 A. Yes, it is.

22 Q. If we can just look at the email just above that, please.

23 A. Okay.

24 MS. PAUL: Can you focus in on that. Thank you.

25 Q. Is Mr. Newkirk copied on this email as well?

FC2VNEW3

Greenwald - redirect

1 A. Yes.

2 MS. PAUL: Can we please bring up Government Exhibit
3 804 please.

4 Q. Mr. Greenwald, you were asked some questions on
5 cross-examination about this term sheet.

6 Do you recall those questions?

7 A. Yes.

8 Q. I think you testified that the term sheet reflected what
9 you were asking for at the start of the deal; is that right?

10 A. Correct.

11 Q. Now, if we could go to page 3 of this document.

12 A. Okay.

13 Q. Where it says guarantor collateral.

14 A. Yes.

15 Q. This is the collateral listed here in the term sheet; is
16 that right?

17 A. Yes, it is.

18 Q. Did Mr. Newkirk tell you that the collateral listed here in
19 the term sheet was, in fact, available to be pledged?

20 A. I don't recall.

21 Q. Did Mr. Newkirk tell you that Calvin Darden Senior's stocks
22 were available to be pledged as collateral for your loan?

23 A. We spoke about the stocks, that they were available for a
24 pledge in some sort of action, yes.

25 MS. PAUL: If we could bring up Government Exhibit

FC2VNEW3

Greenwald - redirect

1 2010 please.

2 Q. Do you have that, Mr. Greenwald?

3 A. I don't have that. I have it on the screen.

4 Q. If you could take a look on your screen.

5 A. Okay.

6 Q. The email at the bottom there.

7 A. Okay. I see it.

8 Q. We could focus in on that.

9 Do you see this email from Calvin Darden dated January
10 29, 2014?

11 A. Yes.

12 Q. In this email, Mr. Darden directs Kyle to get in touch with
13 Harvey for the information that Eitan just requested.

14 Do you see that?

15 A. Yes, I do.

16 Q. He also says that he wants to make sure Harvey is aware of
17 everything that we've granted to them. Do you see that?

18 A. Yes.

19 MS. PAUL: One moment please.

20 Nothing further.

21 THE COURT: Anything else?

22 MR. HARRIS: I'm sorry. One moment, your Honor, if I
23 may.

24 (Pause)

25 MR. HARRIS: Nothing further, your Honor.

FC2VNEW3

Tornay - direct

1 THE COURT: Thank you very much. You may step down.

2 (Witness excused)

3 THE COURT: Please call your next witness.

4 MS. PAUL: The government calls Chaeri Tornay.

5 CHAERI TORNAY,

6 called as a witness by the Government,

7 having been duly sworn, testified as follows:

8 MS. PAUL: May I inquire?

9 THE COURT: Yes.

10 MS. PAUL: Thank you, your Honor.

11 DIRECT EXAMINATION

12 BY MS. PAUL:

13 Q. Good morning, Ms. Tornay.

14 A. Good morning.

15 Q. Where are you employed?

16 A. I'm currently employed at PriceWaterhouseCoopers.

17 Q. What is your position there?

18 A. It is director within the office of the general counsel.

19 Q. Before working at PriceWaterhouseCoopers, where were you
20 employed?

21 A. I was at Bryan Cave.

22 Q. For approximately how long?

23 A. For approximately eight years as a full-time associate, and
24 then as a summer intern for two summers.

25 Q. And is an associate an attorney position?

FC2VNEW3

Tornay - direct

1 A. That's correct.

2 Q. What were your duties and responsibilities as an associate
3 at Bryan Cave?

4 A. I worked in the general corporate group; so I worked on
5 corporate transactions and securities matters.

6 Q. While you were working at Bryan Cave, did you know an
7 attorney named Harvey Newkirk?

8 A. Yes.

9 Q. What was Mr. Newkirk's position at Bryan Cave?

10 A. His title was counsel.

11 Q. Is that a more senior or less senior position than an
12 associate position?

13 A. It is more senior.

14 Q. Approximately when did you first meet Mr. Newkirk?

15 A. It was approximately July, summer of 2013.

16 Q. After meeting Mr. Newkirk, did you work with him on any
17 transactions?

18 A. Yes, I did.

19 Q. What transaction did you work with him on?

20 A. It was the Maxim transaction.

21 Q. Do you see Mr. Newkirk in the courtroom today?

22 A. I do.

23 Q. Where do you see him?

24 MR. HARRIS: We stipulate, your Honor.

25 THE COURT: All right.

FC2VNEW3

Tornay - direct

1 Q. How did you first come to be involved with the Maxim
2 transaction?

3 A. I was asked by Jay Dorman, who was at the time the head
4 partner of the corporate group, to assist Mr. Newkirk in the
5 transaction.

6 Q. Approximately when did you start working on it?

7 A. It was approximately some time in, I think, the end of July
8 2013.

9 Q. At that time did Mr. Newkirk describe the deal to you?

10 A. Yes.

11 Q. What did he tell you about it?

12 A. At the time we had introductory meetings. And he had
13 described that the client was Mr. Darden Senior; and that the
14 company that was the over -- sort of the parent company was
15 Reign Entertainment; and there would be two entities formed
16 below it that would be involved in the acquisition.

17 Q. Did he describe those two entities as subsidiaries of
18 Reign?

19 A. Yes. They were to be formed by Bryan Cave with
20 Mr. Newkirk.

21 Q. Do you remember what the subsidiaries were called?

22 A. One was Darden Media Holdings and then the lower
23 subsidiary, which was supposed to be the entity, legal entity
24 acquiring Alpha Media Group, was, I believe, DMG Beta
25 Acquisition.

FC2VNEW3

Tornay - direct

1 Q. Who was the seller of Maxim?

2 A. It was Alpha -- it was a company called Alpha Media Group.

3 Q. Now, at the time you first became involved in the deal,
4 what was the deal status?

5 A. Mr. Newkirk and Mr. Dorman had explained that it was moving
6 along at a quick pace. And at the time that I had started
7 working with Mr. Newkirk, it was probably, I would say, about
8 two-thirds along in terms of the transaction documents that had
9 been worked on and negotiated.

10 Q. What was your initial role in the deal?

11 A. Mr. Newkirk was primarily working on negotiating the main
12 agreement, which was the purchase agreement. I was assisting
13 with whatever other ancillary documents he needed assistance
14 on.

15 Q. Who did you report to in connection with your work on the
16 deal?

17 A. Mr. Newkirk.

18 Q. Who was the most senior attorney on the deal at the
19 beginning?

20 A. Mr. Newkirk.

21 Q. Initially, were you on any calls regarding the deal?

22 A. The first call that I can recall being a part of was a
23 group call that Mr. Newkirk was on as well as Calvin Darden
24 Junior and Barbara Laurence and another gentleman named Brad
25 Reifler.

FC2VNEW3

Tornay - direct

1 Q. And in general, what was that call about?

2 A. That call was sort of a planning call in terms of what the
3 group was looking to do after the transaction closed and how
4 they could revamp the reputation of Maxim and future plans for
5 how they could bring it back to what it once was.

6 Q. Why were you participating in that call?

7 A. I had asked Mr. Newkirk if I should be on the call. And he
8 had mentioned if I had time, that I should join. So I was only
9 in listening mode during the call.

10 Q. Now, as a lawyer working on a deal, had you ever
11 participated in a planning call like that before?

12 A. Not to my recollection. I thought it was a little bit
13 early in the deal to be discussing that kind of future plan.

14 Q. Now, you mentioned that Calvin Darden Junior was on the
15 call. Did Mr. Newkirk ever tell you what role, if any, Calvin
16 Darden Junior was going to play in the Maxim deal?

17 A. No.

18 Q. Did Mr. Newkirk ever ask you to participate in calls with
19 Calvin Darden Senior?

20 A. No.

21 Q. When Mr. Newkirk received calls about the deal, did he
22 typically ask you to participate or not?

23 MR. HARRIS: Objection. Leading.

24 THE COURT: No, I think it's okay in its foundational
25 situation, but do be careful about the leading.

FC2VNEW3

Tornay - direct

1 Overruled for now.

2 MS. PAUL: Thank you, your Honor.

3 A. Can you please repeat the question.

4 Q. Yes.

5 When Mr. Newkirk received calls about the deal, did he
6 typically ask you to participate or not?

7 A. No, he did not.

8 Q. Did Mr. Newkirk ever ask you to email the client?

9 A. Yes.

10 Q. What email address did he tell you to use?

11 A. He gave me one email address. It was the
12 calvinrdarden@gmail.com address.

13 Q. And who, if anyone, did he say had access to that email
14 address?

15 A. He told me that both Mr. Darden Senior and Mr. Darden
16 Junior had access to that email address.

17 Q. Did you send materials to that email address?

18 A. Yes.

19 Q. Just in general, what types of materials did you send?

20 A. At Mr. Newkirk's instruction, I had sent over documents
21 that had to be signed by Mr. Darden Senior in connection with
22 the transaction.

23 MS. PAUL: May I approach, your Honor?

24 THE COURT: Yes.

25 Q. Ms. Tornay, I've handed you a binder of exhibits that are

FC2VNEW3

Tornay - direct

1 in evidence and I'll be asking you about that.

2 Please take a look first at Government Exhibit 636.

3 Do you recognize that document?

4 A. Yes.

5 Q. What is it?

6 A. It is an email that I sent to the calvinrdarden@gmail.com
7 address on October 14th, 2013.

8 Q. And why did you send this email?

9 A. It is an email attaching for Mr. Darden Senior's signature
10 the employee offer letters and the executive employment
11 agreements that had to be signed in connection with the
12 closing. These were the employees who are -- currently at the
13 time were at Alpha Media Group and would be transitioning into
14 the company after closing.

15 Q. You addressed this email to Mr. Darden. Which Mr. Darden
16 were you referring to?

17 A. I was referring to Mr. Darden Senior.

18 MS. PAUL: If we could just bring up the attachment,
19 first page of the attachment.

20 Q. Who ended up signing the documents that are -- the
21 employment letters that are attached to this email?

22 A. Mr. Darden Junior ended up signing them in the end.

23 Q. And approximately when did Mr. Darden Junior sign these
24 documents.

25 A. So these letters are dated October 15th. And it was just

FC2VNEW3

Tornay - direct

1 right around that time that Mr. Darden Junior came in in person
2 to Bryan Cave to sign the documents.

3 Q. And did he sign them in your presence?

4 A. Yes.

5 Q. Had you ever met Mr. Darden Junior before?

6 A. I had not.

7 Q. What, if anything, did Mr. Newkirk tell you about why
8 Mr. Darden Junior rather than Mr. Darden Senior was signing the
9 documents?

10 A. Mr. Newkirk had told me that Mr. Darden Senior was not able
11 to come to New York from Atlanta because his mother-in-law had
12 passed away and that they were staying back -- he was staying
13 back for funeral services.

14 Q. Do you know whether Mr. Darden Senior's mother-in-law had,
15 in fact, passed away?

16 A. No, I don't know.

17 Q. Can you describe what happened when Mr. Darden Junior came
18 to Bryan Cave to sign these documents.

19 A. We had arranged -- the associate that I was working with,
20 Haley Cohen, and I had arranged a conference room so that he
21 could come and sign the documents. And so we did that on our
22 conference room floor. He came in person to sign the
23 documents.

24 Q. Was Mr. Newkirk there when that happened?

25 A. I believe that Haley and I -- Ms. Cohen and I -- we arrived

FC2VNEW3

Tornay - direct

1 at a conference room and Mr. Darden Junior was there --

2 MR. HARRIS: Objection, your Honor. Not responsive.

3 THE COURT: I'll allow it. But I caution the witness
4 just to respond to the question put. But I'll leave what the
5 answer is said at the moment.

6 Put another question.

7 MS. PAUL: Yes.

8 Q. Was Mr. Newkirk in the conference room that day?

9 A. He entered after Mr. Darden Junior arrived.

10 Q. When he entered, did he and Mr. Darden Junior greet each
11 other?

12 A. Yes, they did.

13 Q. Can you describe that greeting.

14 A. It was a very friendly greeting. They hugged, they called
15 each other bro, and it seemed like they were friends.

16 Q. Please take a look at Government Exhibit 144.

17 Do you recognize that document?

18 A. Yes.

19 Q. What is it?

20 A. These are signature pages that were signed at that meeting
21 by Mr. Darden Junior. They were signature pages for the
22 employment agreements.

23 Q. Are these some of the document -- are these signature pages
24 for some of the documents that Mr. Darden Junior signed in your
25 presence?

FC2VNEW3

Tornay - direct

1 A. Yes.

2 Q. After Mr. Darden Junior signed these documents, what
3 happened?

4 A. After the documents were signed, Mr. Newkirk had told me
5 that he and Mr. Darden Junior were going to take the original
6 signed agreements straight to Alpha Media Group's offices for
7 an in-person meeting.

8 Q. I'd like to direct your attention now to October 18th of
9 2013.

10 Do you recall the Maxim deal being scheduled to close
11 around that time?

12 A. Yes.

13 Q. For the Maxim deal, what were you doing in the days leading
14 up to that October closing date?

15 A. In the days leading up to it I was working with Mr. Newkirk
16 and with Alpha Media Group's counsel, Bodman, to prepare and
17 finalize the closing documents. And I also participated on
18 check-in calls that happened frequently up until the closing.

19 Q. What were the check-in calls about just in general?

20 A. They were group calls where Alpha Media Group's counsel,
21 their lawyers, were on. I would join and there were various
22 other parties trying to line administrative items such as bank
23 accounts and payroll up towards to have it in line and ready
24 for closing.

25 Q. Was Mr. Newkirk on those check-in calls?

FC2VNEW3

Tornay - direct

1 A. He was not.

2 Q. What, if anything, did he tell you about why he was not
3 participating?

4 A. Prior to the calls, I would often check in with him and ask
5 if he would be joining and ask for an update. And he would
6 tell me he would not be joining due to a conflict of some
7 nature. And then I would join and provide whatever updates I
8 had.

9 Q. Did the deal close on October 18th?

10 A. It did not.

11 Q. Can you walk us through what happened that day.

12 A. So that morning, Mr. Newkirk came in and I met him on the
13 office floor where we were, both of our offices were. And
14 seller's counsel, Bodman, they were the attorneys, were sitting
15 on a separate floor from the conference room.

16 Mr. Newkirk told me that Mr. Darden Senior had been
17 hospitalized overnight and that he was not going to be able to
18 press go on the funding.

19 Q. So after Mr. Newkirk said that to you, what happened?

20 A. We both went to -- walked to the conference room floor
21 together and we entered the conference room. And Mr. Newkirk
22 shared the news with the lawyers from Bodman.

23 Q. Were you present when he did that?

24 A. Yes.

25 Q. Prior to that day, had you ever been involved in a

FC2VNEW3

Tornay - direct

1 transaction that had failed to close?

2 MR. HARRIS: Objection.

3 Irrelevant, your Honor.

4 THE COURT: Sustained.

5 Q. Do you know if, in fact, Calvin Darden Senior had been
6 hospitalized at that time?

7 A. No, I do not.

8 Q. After Mr. Newkirk communicated this to the sellers, what
9 happened?

10 A. So the lawyers from Bodman, Forrest Dillon and Larry
11 Dietch, were surprised and had asked what had happened and had
12 asked for more information.

13 Q. What was Mr. Newkirk's response to their request for more
14 information?

15 A. Mr. Newkirk had said at the time he didn't have -- he had
16 limited information about when Mr. Darden Senior was going to
17 be released from the hospital, when he could release the
18 funding.

19 Q. After October 18th, what was your role in the Maxim deal?

20 A. I had limited -- a limited role, excuse me, going forward.
21 Mr. Newkirk had asked me to help on a couple of items beyond
22 that point.

23 At some point I think in November I assisted and also
24 then in January in connection with the loan from the McMahons.

25 Q. During your time working on the Maxim deal, did Mr. Newkirk

FC2VNEW3

Tornay - direct

1 tell you about a lender called Open Gate Capital?

2 A. So Open Gate Capital, the name was familiar to me because
3 in connection with --

4 MR. HARRIS: Objection. Nonresponsive.

5 THE COURT: The question was did he say anything to
6 you about Open Gate Capital.

7 THE WITNESS: He did not provide an explanation for
8 Open Gate Capital other than in connection with adding the name
9 of Open Gate Capital to certain disclosure schedules for the
10 loan agreement.

11 Q. And what loan agreement are you referring to?

12 A. This is the loan agreement for the -- with the McMahons.

13 Q. And approximately when was it that you were discussing a
14 potential loan for the McMahons?

15 A. Oh, timing-wise that was probably the end of December/early
16 January.

17 Q. Was that the first time you became aware of Open Gate?

18 A. Yes.

19 Q. Did Mr. Newkirk ever inform you that Open Gate had filed or
20 threatened to file a lawsuit to recover money that it was owed?

21 A. No.

22 Q. Do you recall a potential lender to the Maxim deal named
23 Mark Weinberg?

24 A. I recall that name, yes.

25 Q. Please take a look at Government Exhibit 201.

FC2VNEW3

Tornay - direct

1 Do you recognize that document?

2 A. Yes.

3 Q. What is it?

4 A. It is an email chain between me and Mr. Newkirk on November
5 7th.

6 Q. Of 2013?

7 A. Yes.

8 Q. If you could turn to the second page of the document
9 please, the email from Mr. Newkirk there.

10 Do you see that?

11 A. Yes.

12 Q. Do you recall money from Mr. Weinberg having been in an
13 escrow account at Bryan Cave?

14 A. Yes.

15 Q. Had you ever seen Bryan Cave act as an escrow agent in this
16 matter?

17 A. It was in my personal experience --

18 MR. HARRIS: Objection.

19 THE COURT: Sustained.

20 Q. Mr. Newkirk makes reference in this email to the Bodman
21 trust account. Do you see that?

22 A. Yes.

23 Q. What did you understand that to be?

24 A. I understood that to be the account for the sellers, Alpha
25 Media Group. It was their attorneys.

FC2VNEW3

Tornay - direct

1 Q. Please take a look at Government Exhibit 202.

2 Do you recognize that document?

3 A. Yes.

4 Q. What is it?

5 A. It is an email from me to Mr. Newkirk also dated on
6 November 7, 2013. And it's 2:55 in the afternoon.

7 Q. In your email to Mr. Newkirk, you make reference to an
8 internal approval from St. Louis. Do you see that?

9 A. Yes.

10 Q. What was that?

11 A. It was an approval that was required internally within
12 Bryan Cave in order to release the funds ultimately upon
13 receiving these instructions.

14 Q. Release which funds?

15 A. I'm sorry, the funds that were sitting in the escrow
16 account.

17 Q. Just to be clear, Mr. Weinberg's funds?

18 A. Yes.

19 Q. So did you get the internal approval that you needed in
20 order for the funds to be released?

21 A. Yes.

22 Q. So as of November 7th, had everything been set up
23 mechanically for the money to be released?

24 A. Yes.

25 Q. So what were you waiting on at this point before releasing

FC2VNEW3

Tornay - direct

1 Mr. Weinberg's money?

2 A. Mr. Newkirk had indicated in that last email that we were
3 waiting for two written confirmations, one from Mr. Darden
4 Senior and the other one from Mr. Weinberg.

5 Q. Now, you also state in your email to Mr. Newkirk that his
6 voicemail box is full and it's not accepting any further
7 messages. Do you see that?

8 A. Yes.

9 Q. How often was that an issue with respect to Mr. Newkirk in
10 your experience?

11 MR. HARRIS: Objection. Relevance.

12 THE COURT: Sustained.

13 Q. In your experience, was Mr. Newkirk difficult to reach?

14 MR. HARRIS: Objection.

15 THE COURT: Sustained.

16 MS. PAUL: May I approach, your Honor?

17 THE COURT: Sure.

18 Q. Ms. Tornay, I've handed you a document that's been marked
19 for identification as Government Exhibit 151. Please take a
20 look at that document and tell me if you recognize it.

21 A. Yes, I do.

22 Q. What is it?

23 A. It is a check request that has my name as the requester
24 name. And I signed the request. And it's to be sent
25 internally to the accounting -- to the accounting department at

FC2VNEW3

Tornay - direct

1 Bryan Cave. And the payee here is Bodman for an amount of \$4.9
2 million.

3 Q. What's the date on this document?

4 A. It is November 8th, 2013.

5 MS. PAUL: The government offers Government Exhibit
6 151 into evidence.

7 MR. HARRIS: No objection, your Honor.

8 THE COURT: Received.

9 (Government's Exhibit 151 received in evidence)

10 Q. Ms. Tornay, what was the purpose of this document?

11 A. This was to -- this was to admit to our internal accounting
12 department to -- which was -- this was required to release the
13 funds.

14 Q. And again, whose funds are you referring to?

15 A. Mr. Weinberg's funds.

16 MS. PAUL: May I approach, your Honor?

17 THE COURT: Yes.

18 Q. Ms. Tornay, I'm handing you two documents which have been
19 marked for identification as Government Exhibits 170 and 170A.

20 Starting with Government Exhibit 170, can you take a
21 look at that document and tell me if you recognize it.

22 A. Yes, I do.

23 Q. What is it?

24 A. It is an email exchange between me and Mr. Newkirk dated
25 August 26, 2013.

FC2VNEW3

Tornay - direct

1 MS. PAUL: The government offers Government Exhibit
2 170 into evidence.

3 MR. HARRIS: I have no objection, your Honor.

4 THE COURT: Received.

5 (Government's Exhibit 170 received in evidence)

6 Q. Ms. Tornay, what was Mr. Newkirk asking you for in this
7 email exchange?

8 A. He was asking me for information, language for a general
9 release and waiver that would be provided to Forefront.

10 Q. For what purpose?

11 MR. HARRIS: Objection, your Honor.

12 The document speaks for itself.

13 THE COURT: No, I'll allow it.

14 MR. HARRIS: Thank you.

15 Q. For what purpose?

16 A. He was asking for information for the general release which
17 was supposed to be provided to Forefront, which was Darden
18 Media releasing Forefront from obligations in the commitment
19 letter.

20 Q. Taking a look at the bottom email from you on the first
21 page there, what were you asking Mr. Newkirk for here about the
22 general release and waiver?

23 A. I was just trying to understand a little bit more of the
24 context so that I could provide appropriate sample language
25 since general releases and waivers can vary.

FC2VNEW3

Tornay - direct

1 Q. And what was Mr. Newkirk's response?

2 Take a look at the email from him at the top of the
3 page.

4 MR. HARRIS: Asked and answered.

5 THE COURT: I'll allow it.

6 A. He was asking for the information -- it was supposed to be
7 Darden Media releasing Forefront from its obligations under the
8 commitment letter. And it's something that Alpha Media Group
9 had requested.

10 Q. All right. Please take a look at what's been marked for
11 identification as Government Exhibit 170A.

12 Do you recognize that document?

13 A. Yes.

14 Q. What is it?

15 A. It is an email chain between me and Mr. Newkirk dated
16 August 26th, 2013. It's a little bit later in the day than the
17 previous.

18 MS. PAUL: The government offers Government Exhibit
19 170A into evidence.

20 MR. HARRIS: Your Honor, may I have one moment to look
21 at it?

22 THE COURT: Yes.

23 (Pause)

24 MR. HARRIS: No objections.

25 THE COURT: Received.

FC2VNEW3

Tornay - direct

(Government's Exhibit 170A received in evidence)

Q. Ms. Tornay, I'd like to focus on the bottom email from Mr. Newkirk on the second page of the document.

Do you see that email?

A. Yes.

Q. This is from Mr. Newkirk to you on August 26th?

A. Yes.

Q. So what was Mr. Newkirk sending to you in that email?

A. He was sending me the release language that he had wanted me to use to put together in the agreement.

Q. To be clear, which agreement?

A. Sorry, the general release and waiver that he had requested that I provide sample language for.

Q. And this was in connection with the Forefront release?

A. Yes.

Q. Ms. Tornay, did you make a record of the hours that you spent working on the Maxim transaction?

A. Yes.

Q. Please take a look at Government Exhibit 507. It should be in your binder. I'd like to direct your attention specifically to page 16 of this document, which we'll bring up on the screen as well.

Is this a bill?

A. Yes.

(Continued on next page)

Fc26new4

Tornay - direct

1 BY MS. PAUL:

2 Q. There is a reference on this bill -- actually withdrawn.

3 Where it says C. Tornay on the bill, is that a record
4 of particular hours that you worked?

5 A. Yes.

6 Q. There is a reference here on the bill -- the next page. I
7 apologize. Page 17. I believe it is on your screen.

8 There is a reference here in the bill to a conference
9 that you had with Mr. Newkirk regarding a nondisclosure
10 agreement with Stealth SME.

11 Do you see that on the bill?

12 MR. HARRIS: Objection, your Honor, relevance.

13 THE COURT: Overruled.

14 Q. Do you see that?

15 A. Yes.

16 Q. Do you recall billing work for Stealth SME?

17 A. Mr. Newkirk asked me to prepare a nondisclosure for the
18 entity and I had asked him to which client matter number I
19 should bill the work and he indicated that I should bill it to
20 here.

21 Q. When you say "here," what do you mean?

22 A. Sorry. To the matter number related to Mr. Darden Senior
23 and the Maxim transaction.

24 Q. Ms. Tornay, are you registered as a notary public?

25 A. Yes.

Fc26new4

Tornay - direct

1 Q. What is that?

2 A. A notary public is someone who verifies the identity of the
3 person signing a document and also confirms witnesses' oaths.

4 Q. Did there come a time when Mr. Newkirk asked you to
5 notarize a document for him?

6 A. Yes. I recall there was one time.

7 MS. PAUL: May I approach, your Honor?

8 THE COURT: Yes.

9 Q. I am handing you a document that has been marked for
10 identification as Government Exhibit 143.

11 Is this a document that you notarized?

12 A. Yes.

13 Q. Is that your notary stamp on the second page?

14 A. Yes, it is.

15 Q. Whose signature appears above yours?

16 A. Mr. Newkirk.

17 MS. PAUL: The government offers Government
18 Exhibit 143 into evidence.

19 MR. HARRIS: Your Honor, I object, and request a side
20 bar.

21 THE COURT: Come to side bar.

22 (Continued on next page)

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Fc26new4

Tornay - direct

1 (At the side bar)

2 MR. HARRIS: Your Honor, I think this violates the
3 ruling on Mr. Mailman and I don't believe we opened the door to
4 and I don't believe it should come in.

5 MS. PAUL: Your Honor, there is no reference to the
6 boxing deal in this document whatsoever. In fact, this
7 document is to Mr. Newkirk from Reign.

8 THE COURT: I don't see any reference other than the
9 term pugilist in the beginning sentence, which could easily be
10 redacted. Other than that, there is no indication that this
11 relates to the boxing deal. So the objection is overruled.
12 But if the defense wants that word redacted on the assumption
13 that the jury will be pugilistically challenged, that would be
14 okay. I see counsel doesn't feel that is necessary.

15 How much longer do you have.

16 MS. PAUL: I am almost done.

17 THE COURT: Very good.

18 (Continued on next page)

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Fc26new4

Tornay - direct

(In open court; jury present)

MS. PAUL: The government offers Government Exhibit 143 into evidence.

THE COURT: Received.

(Government's Exhibit 143 received in evidence)

BY MS. PAUL:

Q. Ms. Tornay, is this the document that Mr. Newkirk asked you to notarize for him?

A. Yes.

Q. And what, if anything, did he tell you about it?

A. He did not tell me anything about it.

MS. PAUL: One moment.

Q. Directing your attention to the first paragraph of the document on page 1, what does the first paragraph indicate?

MR. HARRIS: Objection. The document speaks for itself.

THE COURT: I think that could call for a little explaining.

Overruled.

A. It indicates that he is the managing member of this entity called Invictus Pugilist Ventures, LLC, which is a limited liability company formed in Delaware.

Q. Specifically paragraph one there, what does that paragraph indicate?

MR. HARRIS: Your Honor, I repeat my objection. She

Fc26new4

Tornay - cross

1 has no knowledge.

2 THE COURT: Overruled.

3 MR. HARRIS: Thank you.

4 A. It describes that on February 3rd, 2011 there was an
5 assignment agreement where Mr. Newkirk assigned his right to
6 Josh Mailman to certain revenue entitlements of The Reign
7 Entertainment Group and that was in consideration of cancelling
8 Mr. Mailman's interest and the right to receive a profit amount
9 equal to 20 percent.

10 MS. PAUL: One moment.

11 No further questions.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. HARRIS:

15 Q. Good afternoon, Ms. Tornay. My name is John Harris. I
16 represent Harvey Newkirk.

17 We have never met, have you?

18 A. No.

19 Q. We have never spoken; right?

20 A. That's correct.

21 Q. Ms. Tornay, just on this GX 143, which is the last document
22 the government showed you, that refers in paragraph one to
23 February 2011; correct?

24 A. Yes.

25 Q. When did you first meet Mr. Newkirk?

Fc26new4

Tornay - cross

1 A. I met him in approximately July 2013.

2 Q. When were you working on the Maxim deal with Mr. Newkirk?

3 A. It was the, you know, summer into the fall of 2013 and it
4 spilled over 2014.

5 Q. The government asked you some questions about an escrow
6 account.

7 Do you recall that?

8 A. Yes.

9 Q. There are a bunch of procedures. You are require approval
10 from St. Louis?

11 A. Yes.

12 Q. Why approval from St. Louis?

13 A. The -- as I learned in the process, the CFO or partner at
14 Clorkland in the St. Louis office had to confirm that the funds
15 were in the escrow account to be wired.

16 Q. Is St. Louis the home base, for lack of a better word, for
17 Bryan Cave?

18 A. So for Bryan Cave it is the founding office, the
19 originating office. That's correct.

20 Q. So A lawyer in New York had no ability to send a \$5 million
21 wire without the approval from St. Louis; right?

22 A. I learned that that was one of the procedures that was
23 required, yes.

24 Q. And then the government showed you some -- I apologize, I
25 just don't remember the exhibit number, but they showed you an

Fc26new4

Tornay - cross

1 exhibit that showed, I guess, a form you filled out about the
2 wire.

3 A. Yes. The check request.

4 Q. Do you know what exhibit number that is?

5 A. 151.

6 Q. 151. Thank you.

7 You have to provide in this form the amount, and the
8 date, where it is going, who it is going to, all that type of
9 information?

10 A. Yes. That is correct.

11 Q. Without this form no wire gets sent; right?

12 A. Yes. It is a requirement.

13 Q. You understand that Bryan Cave would keep a record of all
14 these forms; right?

15 A. Yes.

16 Q. So you can always go back and check and see who sent a wire
17 to whom and who authorized it?

18 A. Yes. That is my understanding.

19 Q. That is all open; right?

20 MS. PAUL: Objection, vague.

21 Q. That is all kept in the ordinary records of Bryan Cave;
22 correct?

23 A. My understanding is that the accounting department keeps
24 records of this nature. That's correct.

25 Q. There was a question about your e-mail at Bryan Cave. Was

Fc26new4

Tornay - cross

1 your understanding that your e-mail at Bryan Cave was private?

2 A. Can you please explain what you mean by "private"?

3 Q. Did you understand that folks at the firm could look at
4 your e-mail?

5 MS. PAUL: Objection, relevance.

6 THE COURT: I will allow it.

7 A. As I understood with our policy at the firm with respect to
8 e-mails was that the firm could monitor or review e-mails that
9 were either being received or sent out from my personal e-mail
10 address or any of the other attorneys or staff members.

11 Q. That also applied to your Bryan Cave e-mail; correct?

12 A. Yes. That's correct.

13 Q. How long, Ms. Tornay, were you at Bryan Cave?

14 A. I was there starting in September 2007 as a full-time
15 attorney.

16 Q. You were an associate?

17 A. Yes.

18 Q. And as an associate did you have your own clients?

19 A. I did not.

20 Q. You primarily worked on clients that were brought in by
21 somebody else at the firm?

22 A. Yes.

23 Q. And am I correct that Bryan Cave has approximately a
24 thousand lawyers worldwide?

25 A. I believe that was pretty accurate at the time. I don't

Fc26new4

Tornay - cross

1 know the current number, but that is approximately. Somewhere
2 between 1000 and 1,500 attorneys.

3 Q. Bryan Cave is a prestigious law firm?

4 A. Yes.

5 Q. Am I correct that Bryan Cave had offices around the world?

6 A. Yes, it does.

7 Q. Offices in London, Paris and New York?

8 MS. PAUL: Objection, relevance.

9 THE COURT: Sustained.

10 Q. You were in the New York office; correct?

11 A. I was, yes.

12 Q. How many lawyers in the New York office?

13 A. It is approximately somewhere in the range of 120 to 140
14 attorneys at any given time.

15 Q. Are the lawyers in the New York office divided into
16 practice groups?

17 A. Yes, they are.

18 MS. PAUL: Objection, relevance.

19 THE COURT: I cannot tell yet so I will allow the next
20 few questions.

21 MR. HARRIS: Thank you.

22 THE COURT: So the answer was?

23 A. Yes, we are divided. No, I am sorry. The attorneys are
24 all divided into practice groups.

25 Q. What practice group were you in?

Fc26new4

Tornay - cross

1 A. I was in the general corporate practice group.

2 Q. Was there a head of the corporate practice group?

3 A. In the New York office the head was this gentleman Jay
4 Dorman.

5 Q. You mentioned Mr. Dorman on your direct exam; correct?

6 A. I did, yes.

7 Q. Did there come a time that Mr. Dorman had a role in the
8 Maxim deal?

9 A. I had learned that --

10 MS. PAUL: Objection. Calls for hearsay.

11 THE COURT: Sustained.

12 Q. Did you work with Mr. Dorman on the Maxim deal?

13 A. I did not work with Mr. Dorman.

14 MR. HARRIS: May I approach, your Honor?

15 THE COURT: Yes.

16 MR. HARRIS: I am handing to Ms. Tornay what is marked
17 as Defense 761, which is an e-mail from herself to Jay Dorman
18 dated November 14th, 2013. The subject is Maxim in connection
19 with the closing date. I would offer that exhibit.

20 MS. PAUL: Objection, hearsay.

21 THE COURT: Sustained.

22 MR. HARRIS: Not offered for truth, your Honor.

23 THE COURT: Let me see it.

24 Well, I don't see what relevance it would have if not
25 offered for its truth; but if you want to come to side bar, I

Fc26new4

Tornay - cross

1 will hear you.

2 MR. HARRIS: Thank you, your Honor.

3 (Continued on next page)

Fc26new4

Tornay - cross

1 (At the side bar)

2 MR. HARRIS: Your Honor, it is offered to show that
3 she in fact worked with Mr. Dorman on this transaction and she
4 had a role in the transaction.

5 THE COURT: You wouldn't know that unless it is taken
6 for its truth.

7 MR. HARRIS: That is a fair point, your Honor.

8 THE COURT: Pardon?

9 MR. HARRIS: That's a fair point, your Honor.

10 THE COURT: Sustained.

11 MR. HARRIS: May I offer it for the truth?

12 THE COURT: It's hearsay.

13 MR. HARRIS: It is a business record and it is a
14 document that attaches--

15 THE COURT: Well, if you want to establish that it is
16 a business record, you haven't done that yet. Let me ask you
17 this: What is the relevance of the fact that she worked on it?

18 MR. HARRIS: I believe Ms. Tornay somewhat diminished
19 her involvement.

20 THE COURT: She?

21 MR. HARRIS: Diminished her involvement in the matter.
22 She basically said she didn't do anything. She didn't know
23 this. She didn't know that. In fact, she spoke with
24 Mr. Dorman. She dealt with the people at K&L Gates. She knew
25 about the McMahon deal. I think it is relevant to establish

Fc26new4

Tornay - cross

1 that.

2 THE COURT: Wait. First of all, I am sorry, you want
3 to establish that Ms. Tornay did all those things?

4 MR. HARRIS: I do.

5 THE COURT: What is the relevance of that?

6 MR. HARRIS: The relevance is she tried to put
7 Mr. Newkirk out on an island and I believe --

8 THE COURT: I am sorry?

9 MR. HARRIS: She tried to put Mr. Newkirk out on an
10 island in terms of her involvement with the deal. The
11 government thought it was relevant. They elicited that
12 testimony and I don't believe that testimony is correct.

13 THE COURT: How is this witness who --

14 MR. HARRIS: She is Ms. Tornay. I have a series of
15 documents.

16 THE COURT: Let's go back a step. I am not sure it is
17 relevant; but assuming it is relevant, you can get that from
18 Ms. Tornay. I thought we were talking about the relevance of
19 this document assuming you can make it -- can show it is a
20 business record, which you haven't done that, assuming you can
21 do that and you overcome the hearsay problem, all this shows is
22 that she is attaching some documents. So what is the relevance
23 of that?

24 MR. HARRIS: She is sending it to Mr. Dorman who is
25 the head of the corporate department.

Fc26new4

Tornay - cross

1 THE COURT: Right.

2 MR. HARRIS: Who took over responsibility for this
3 deal starting in the middle of November.

4 THE COURT: Okay.

5 MR. HARRIS: I would like to establish that.

6 THE COURT: I am still missing your point. You are
7 trying to show that Mr. Newkirk is no longer involved?

8 MR. HARRIS: No. He remains involved, your Honor.

9 THE COURT: So what is the relevance of all this?

10 MR. HARRIS: Mr. Newkirk is being supervised. The
11 head of the corporate department is involved. The head of the
12 corporate department is actively negotiating with the McMahons
13 and the other parties. So it is Bryan Cave that is engaged,
14 not Mr. Newkirk.

15 THE COURT: Well, that's true. The question is:
16 These are allegations that Mr. Newkirk knew X and Y and Z that
17 made this a fraudulent deal. Do you have any evidence that
18 Mr. Dorman knew any of those things?

19 MR. HARRIS: I have evidence that Mr. Dorman spoke
20 with Calvin Darden Junior, that he spoke with Mr. Deitch, that
21 he was aware of the spoof e-mail problems, that he continued to
22 work on the deal, that he did not tell Mr. Newkirk to stop
23 working on the deal.

24 THE COURT: Assuming that you are going to establish
25 that, I think we have to take it one step at a time. I think

Fc26new4

Tornay - cross

1 the argument seems to be that because other people were
2 involved in this deal who are not accused of having fraudulent
3 knowledge that the jury can infer from that that Mr. Newkirk
4 did not have fraudulent knowledge. I think that is a very weak
5 argument and normally it would be inadmissible except for the
6 government has asked for, and I've in my draft tentatively
7 given all those and objected to that we'll be discussed at the
8 conference, a conscious avoidance instruction. If relevant at
9 all, and I still have doubts about it, but if relevant at all
10 it would only be relevant on the conscious avoidance issue,
11 because as the defense points out in their objection to the
12 conscious avoidance issue, the government's primary position is
13 that Mr. Newkirk had actual knowledge and there is no
14 suggestion and defense has offered none that Mr. Dorman had
15 actual knowledge.

16 MR. HARRIS: That's correct.

17 THE COURT: So the only conceivable relevance would
18 be, well, Mr. Newkirk, we can tell Mr. Newkirk to not have --
19 the government has not shown that Mr. Newkirk has actual
20 knowledge and, ladies and gentlemen, don't think he had
21 conscious avoidance knowledge because other people who were
22 involved in the case didn't have conscious avoidance knowledge
23 where the government is not taking such. I take it that is the
24 best gloss I can put on your argument.

25 MR. HARRIS: Yes, your Honor.

Fc26new4

Tornay - cross

1 THE COURT: Does the government want to be heard on
2 any of that?

3 MS. PAUL: Just briefly, your Honor. Our position is
4 what Jay Dorman knew or what he didn't know or whether he had
5 knowledge or not is completely irrelevant whether Mr. Newkirk
6 had knowledge.

7 THE COURT: You are not calling Mr. Dorman, are you?

8 MR. HARRIS: We're not, your Honor.

9 THE COURT: So if this comes in at all, it is going to
10 come in very indirectly through someone who has no personal
11 knowledge of what Mr. Dorman was. But to the extent that
12 Mr. Dorman's involvement from the side from peripheral e-mails
13 or things like that, if you can establish the business record
14 aspect of this, I will allow in this exhibit and we'll take it
15 one step at a time.

16 MS. CHAUDHRY: thank you, your Honor.

17 (Continued on next page)

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Fc26new4

Tornay - cross

1 (In open court; jury present)

2 BY MR. HARRIS:

3 Q. Ms. Tornay, did Bryan Cave have a document management
4 system?

5 A. Can you -- yes. They had a document management system.

6 Q. And agreements in a deal were routinely stored in that
7 system?

8 A. Yes. That is correct.

9 Q. Was that an important part of Bryan Cave's business,
10 keeping accurate files on deals?

11 A. Yes.

12 Q. Sometimes a superior at Bryan Cave asked you to send them
13 an agreement?

14 A. Yes.

15 THE COURT: If I may, I will take the liberty of
16 interrupting.

17 Ms. Tornay, looking at Exhibit 761, was this an e-mail
18 and the attachments thereto prepared as part of your ordinary
19 course of your legal work at Bryan Cave?

20 THE WITNESS: Yes.

21 THE COURT: Was it prepared at or about the time of
22 the e-mail reflected at the top of the Exhibit 761?

23 THE WITNESS: Yes.

24 THE COURT: Were these materials kept and retained as
25 part of the ordinary business of Bryan Cave?

Fc26new4

Tornay - cross

1 THE WITNESS: Yes.

2 THE COURT: Are you offering 761.

3 MR. HARRIS: I am, your Honor.

4 THE COURT: Received.

5 (Defendant's Exhibit 761 received in evidence)

6 MR. HARRIS: Can we publish 761 to the jury.

7 BY MR. HARRIS:

8 Q. I will be brief with this document, Ms. Tornay.

9 Do you see that you are sending a document entitled
10 Maxim third extension agreement or extension for third
11 agreement to Mr. Dorman?

12 A. The subject heading is "Maxim extensions of the closing
13 date," yes.

14 Q. Do you recall why you were sending this to Mr. Dorman?

15 A. Mr. Dorman had asked me to send him the extension
16 agreement.

17 Q. Did you have an understanding why Mr. Dorman asked you to
18 do that?

19 A. I had learned right around that time.

20 MS. PAUL: Objection, calls for hearsay.

21 THE COURT: Sustained.

22 Q. Ms. Tornay, I would like to show you Government Exhibit 507
23 which is in evidence.

24 A. Yes.

25 Q. Can you please turn to page 23 of 34.

Fc26new4

Tornay - cross

1 A. Did you say 23?

2 Q. Yes.

3 A. Okay.

4 Q. Did you see that on page 23 -- this is the time records for
5 the case; right?

6 A. Yes. These are the time records we keep for the bills,
7 yes.

8 Q. This is not just your time records; right? This is all the
9 time records for all the lawyers who work on this matter;
10 right?

11 A. Yes.

12 Q. So if you look just page 23, you see Mr. Newkirk has billed
13 time into the matter at the top?

14 A. Yes.

15 Q. H.F. Berger, who is that?

16 A. Ms. Berger is a paralegal at Bryan Cave.

17 Q. You have time entries; correct?

18 A. Yes.

19 Q. Then on 11-14-13 Mr. Dorman has time entries; correct?

20 A. Yes.

21 Q. If you flip the page to the next page, do you see that
22 Mr. Dorman has additional time entries?

23 A. Yes.

24 Q. Do you see that continues throughout this document if you
25 flip it through?

Fc26new4

Tornay - cross

1 A. Yes.

2 Q. Do you also see that a Mr. Weissman has time entries?

3 A. Yes.

4 Q. Who do you understand Mr. Weissman to be?

5 A. Mr. Weissman is a partner in the litigation group at Bryan
6 Cave.

7 Q. Then if we flip through this, we see that as this deal goes
8 out into -- if you go to page 30, this ends, this particular
9 bill ends on 12-31-2013; correct?

10 A. Yes.

11 Q. Do you see that you continue to have time entries right up
12 until the end?

13 A. Yes.

14 Q. Do you also see that Mr. Dorman continued with the time
15 entries right up until the end?

16 A. Yes.

17 Q. As to the Maxim deal; correct?

18 A. Yes.

19 Q. There are some entries there on that page 30 for J.S.
20 Chavkin. Who is J.S. Chavkin?

21 A. Jeff Chavkin is a partner in the banking/lending group at
22 Bryan Cave.

23 Q. Am I correct that you worked with Mr. Chavkin in
24 conjunction with the proposed investment by the McMahons?

25 A. Mr. Newkirk asked me to assist Mr. Chavkin.

Fc26new4

Tornay - cross

1 Q. Do you recall what you worked on with Mr. Chavkin?

2 A. Yes.

3 Q. What was that?

4 A. Mr. Newkirk had asked me to help provide Mr. Chavkin with
5 any background information to the original transaction. He
6 also asked me to assist in preparing schedules to the loan
7 agreement, disclosure schedules.

8 Q. What is a disclosure schedule?

9 A. A disclosure schedule is usually an annex, an attachment to
10 the main agreement and each schedule coordinates back to
11 certain provisions within the agreement and sets forth certain
12 information that is required in the agreement.

13 Q. So, for example, a party to a deal might say you have to
14 list all outstanding lawsuits?

15 A. Yes. That could be.

16 Q. It might say you have to list all outstanding loans?

17 A. Yes.

18 Q. The McMahons were asking for both those things; correct?

19 A. I don't recall whether both were included.

20 Q. Do you recall if Open Gate -- the Open Gate loan was listed
21 on those schedules?

22 A. I believe I was instructed by Mr. Newkirk to include Open
23 Gate Capital in the schedules, but I cannot recall exactly
24 those schedules.

25 Q. Am I correct that the McMahons were represented by K&L

Fc26new4

Tornay - cross

1 Gates in that transaction?

2 A. Yes. I recall that they were, yes.

3 Q. And that you had communications with K&L Gates?

4 A. I -- my recollection is that I communicated as

5 Mr. Newkirk's instruction with an associate, an attorney there.

6 I believe her name was Calvina Bostick.

7 Q. You also testified on direct that you were I believe a
8 phone call with Barbara Laurence?

9 A. Yes.

10 Q. Who did you understand Ms. Laurence to be?

11 A. I had understood Ms. Laurence to be in more of a consulting
12 advisory role to the transaction.

13 Q. You also testified directly that you communicated with Brad
14 Reifler?

15 A. He was on that one group call that I mentioned, yes.

16 Q. You also were on calls with Mr. Deitch of the Bodman Firm?

17 A. Yes. He is one of the attorneys for Alpha Media Group.

18 Q. You spoke with John Moskowitz from Odeon Partners?

19 A. Yes, I did, on one occasion.

20 Q. You spoke with a gentleman named Hines who was a consultant
21 to the Dardens?

22 A. Yes.

23 Q. You spoke with a gentleman named Valentine who is a
24 consultant for the Dardens?

25 A. Yes.

Fc26new4

Tornay - cross

1 Q. You testified on direct that you actually met Calvin Darden
2 Junior; correct?

3 A. I met him on that one occasion, yes.

4 Q. He came to the office to sign this documents; is that
5 right?

6 A. Yes.

7 Q. Did Barbara Laurence come on that day with him?

8 A. She did not.

9 Q. Do you recall when Mr. Darden came to sign the documents?

10 A. Mr. Darden Junior came in -- it was one or two days prior
11 to the October 18th date. So sometime that week.

12 Q. The October 18th date, that was the date you originally
13 scheduled for closing; correct?

14 A. Just to clarify it was not the original date for the
15 closing. This was a previous date I believe in September that
16 had been extended out to October 18th.

17 Q. That was the date of the extended closing?

18 A. Yes. That's correct.

19 Q. You testified that Mr. Newkirk wasn't there at first;
20 correct?

21 MS. PAUL: Objection.

22 A. Can you please clarify? Wasn't where?

23 Q. Physically present.

24 MS. PAUL: Objection, vague.

25 Q. Were you aware that Mr. Newkirk had had a prematurely born

Fc26new4

Tornay - cross

1 baby that week?

2 MR. HARRIS: Objection.

3 THE COURT: Totally inappropriate, counsel, given the
4 previous objection and putting your credibility into play and--

5 MR. HARRIS: I did --

6 THE COURT: Excuse me.

7 Ladies and gentlemen, I think we're going to take a
8 lunch break now. We'll see you at 2:00.

9 (Jury excused)

10 (Continued on next page)

Fc26new4

Tornay - cross

1 (In open court; jury not present)

2 THE COURT: Please be seated.

3 MR. HARRIS: I did not mean to ask that improper
4 question, your Honor.

5 THE COURT: Well, I will let it go at that because of
6 my respect for counsel; but there has been a tendency at
7 various points in this case for counsel to put in effect their
8 credibility in issue by stating as facts something not in
9 evidence. If it were to happen again, I would have to take
10 more drastic measure.

11 MR. HARRIS: Your Honor, I apologize. I did not mean
12 to do that.

13 THE COURT: Very good.

14 How much longer do you have?

15 MR. HARRIS: 15 minutes, 20 minutes.

16 THE COURT: Who else do we have in terms of government
17 witnesses.

18 MR. ADAMS: The government will call Vincent Alfieri,
19 followed by Elizabeth Garvey, Paul Deal and then we'll be done.
20 I think we'll be finished today if we keep at this pace.

21 THE COURT: As I informed you yesterday, the answer is
22 not a hypothetical.

23 MR. ADAMS: Your Honor, if we could just raise one
24 issue before we resume Ms. Tornay.

25 THE COURT: Yes.

Fc26new4

Tornay - cross

1 MR. ADAMS: We were going to raise this at the end of
2 the day in anticipation of potential defense witnesses. We
3 believe that the reference to Mr. Newkirk's children's health
4 and the premature birth of a child is completely irrelevant and
5 extremely prejudicial and should be precluded regardless of
6 which witnesses testify about it under 401 and 403.

7 THE COURT: I am not going to make an advisory ruling
8 on that. You may recall that on the direct of this witness,
9 your colleague asked questions of the sort was Mr. Newkirk hard
10 to get ahold of or hard to reach and I sustained the objection
11 so that is not part of the evidence. Had I not sustained those
12 objections, then the defense could fairly have raised, Isn't it
13 a fact that Mr. Newkirk was not present. They couldn't raise
14 it in the form that objected, but I am talking about evidence
15 later in the case. They can present evidence that the reason
16 that Mr. Newkirk was not present at a given meeting or given
17 occasion was because of health issues or family issues or
18 whatever. So I cannot make an across-the-board ruling on this
19 until I hear the specific context. I do agree it should be the
20 subject of a side bar not a subject of question stated in open
21 court.

22 MR. ADAMS: Thank you, your Honor. Fair enough with
23 respect to the question that was put earlier. The reason that
24 we want to raise it now, and I think it is no longer simply
25 advisory, is given what Mr. Harris was just about to ask Ms.

Fc26new4

Tornay - cross

1 Tornay. It seems like this is the next question that is
2 coming.

3 THE COURT: So we'll just leave it at that. We'll see
4 you all at 2:00.

5 MR. ADAMS: Thank you, your Honor.

6 (Luncheon recess)

7 (Continued on next page)

FC2VNEW5

Tornay - cross

A F T E R N O O N S E S S I O N

2:06 P.M.

MR. HARRIS: Your Honor, may I have a brief sidebar?

THE COURT: Okay.

(At the side bar)

MR. HARRIS: I don't want to ask an improper question.

I didn't think it was improper because she knew he was in the hospital. I have that. I expected her to say, Yes, I was aware.

THE COURT: I'm glad you had a good-faith basis, but it's still not the proper form; although this diminishes the degree of impropriety.

It still is a separate objection to refer to something that's not in evidence as a fact. So you would still have to -- you could put it in the form of did you have an -- was so-and-so present or not. Did you have any understanding as to why he was not present. Now that, of course, also might be objectionable as hearsay, but -- and I'm not quite sure how you would overcome that.

So I think you have more technical difficulties, but I'm glad to know at least that you had a good-faith basis for assuming that she knew it. That makes it a much less egregious violation. But I'm not sure you can ask the question for the reasons just mentioned. I think it's hearsay.

MR. HARRIS: Can I ask her if she knew why he was late

FC2VNEW5

Tornay - cross

1 for the meeting?

2 THE COURT: How would she know that other than by
3 hearsay?

4 MR. HARRIS: He told me he was at the hospital.

5 THE COURT: Pardon?

6 MR. HARRIS: Yeah, I understand it's for the truth.

7 THE COURT: Yes.

8 MR. HARRIS: All right.

9 THE COURT: But good try.

10 MR. HARRIS: Okay.

11 THE COURT: Your colleague is -- I can see the wheels
12 turning and she may have a suggestion for you.

13 But anyway, why don't we continue.

14 (Continued on next page)

FC2VNEW5

Tornay - cross

1 (In open court)

2 THE COURT: All right. Let's bring in the jury.

3 (Jury present)

4 THE COURT: All right.

5 Counsel.

6 CHAERI TORNAY, resumed.

7 BY MR. HARRIS:

8 Q. Good afternoon, Ms. Tornay.

9 A. Hi. Good afternoon.

10 Q. Ms. Tornay, do you recall if Mr. Newkirk ever asked you to
11 work an a promissory note for the Maxim deal?

12 A. I do recall that he asked me to work on it.

13 Q. Do you recall if that was for a \$3.5 million promissory
14 note?

15 A. I do not recall that, no.

16 Q. Do you recall if that was on October 23rd, 2013?

17 A. I'm sorry, I don't recall the date.

18 Q. I'm just going to show you a document.

19 MR. HARRIS: Your Honor, may I approach?

20 THE COURT: Yes.

21 Q. Ms. Tornay, I'm showing you Defendant's Exhibit 758 for
22 identification only. Do you have that document?

23 A. Yes.

24 Q. Do you see that's an email from Harvey Newkirk to yourself
25 on 10/23/2013?

FC2VNEW5

Tornay - cross

1 A. Yes.

2 Q. Does that refresh your recollection as to the date you were
3 asked to work on the promissory note?

4 A. Yes.

5 Q. What date was that?

6 A. It was October 23rd, 2013.

7 Q. Does that also refresh your recollection that the amount
8 was \$3.5 million?

9 A. Yes, the email states that it's 3.5 million.

10 Q. Please don't read from the email; try and get your
11 recollection.

12 Am I correct that the borrower, the grantor, was going
13 to be Mr. Darden?

14 A. Yes.

15 Q. Ms. Tornay, you testified that Mr. Darden was, I believe,
16 late to the closing meeting.

17 A. When you are referring to "the closing meeting," can you
18 please clarify.

19 Q. Sure.

20 There's going to be a closing on October 18th.

21 A. Yes, the morning of October 18th.

22 Q. You testified that Mr. Dietch came in.

23 A. Yes, Mr. Dietch and Mr. Forrest Dillon were also in the
24 conference room.

25 Q. Do you recall testifying that Mr. Newkirk had told you

FC2VNEW5

Tornay - cross

1 about Calvin Darden's mother-in-law?

2 A. Yes.

3 Q. Did you hear that from someone else as well?

4 A. I believe I also had learned that from --

5 MS. PAUL: Objection. Calls for hearsay.

6 THE COURT: Sustained.

7 Q. Do you believe that you learned that first from
8 Mr. Newkirk?

9 A. I do not recall.

10 Q. May I show you a document.

11 I show you what's been marked Defendant's Exhibit 551
12 for identification only.

13 A. Yes.

14 Q. Does that refresh your recollection as to who you first
15 learned about the mother-in-law from?

16 A. Yes, Forrest Dillon and --

17 MS. PAUL: Objection. Calls for hearsay.

18 THE COURT: Sustained.

19 MR. HARRIS: Not for the truth, your Honor.

20 THE COURT: I'm sorry?

21 MR. HARRIS: It's not for the truth.

22 THE COURT: First of all, I'm not sure the witness
23 fully understands when you ask whether a document refreshes
24 your recollection. What that means is not what it says on the
25 document, it means that having looked at the document, do you

FC2VNEW5

Tornay - cross

1 now have an independent recollection in your mind as to fact X
2 or fact Y or fact Z.

3 But the previous question was does that refresh your
4 recollection as to who first learned -- as to whom, it should
5 have been "whom," you said "who," but I will forgive you -- as
6 to whom you first learned about the mother-in-law from. And
7 the answer was yes, and then she began saying something else.
8 There was an objection, calls for hearsay. I sustained the
9 objection, however, because she was answering beyond the scope
10 of the question put. The answer to your question was yes.

11 Now, would you like to put another question?

12 MR. HARRIS: I would, your Honor.

13 BY MR. HARRIS:

14 Q. Do you recall from whom you first learned it?

15 A. Based on this refreshment of my recollection, yes.

16 Q. And from whom?

17 A. From Larry Dietch and Forrest Dillon of Bodman.

18 Q. Thank you.

19 You testified earlier that Mr. Newkirk was late to --
20 I'm going to call it that October closing meeting.

21 A. Yes, he had arrived a little bit late that morning.

22 Q. Do you know why?

23 MS. PAUL: Objection.

24 THE COURT: Sustained.

25 MR. HARRIS: Your Honor, may I have one moment?

FC2VNEW5

Tornay - cross

1 THE COURT: Yes.

2 (Pause)

3 Q. Ms. Tornay, do you have a recollection of the period of
4 time when Mr. -- I believe you testified there was a period of
5 time when Mr. Newkirk was out of the office a lot.

6 MS. PAUL: Objection.

7 THE COURT: You can answer that question yes or no.

8 A. I -- no, I don't recall a specific period of time during
9 which he was --

10 Q. Do you remember him being out of the office a lot during
11 the Maxim transaction?

12 MS. PAUL: Objection.

13 THE COURT: Well, I will allow that. I think, just so
14 you're aware, it opens the door to the question I sustained
15 your objection on. You know the one I'm referring to.

16 MR. HARRIS: I understand that, your Honor.

17 THE COURT: Okay. But you want to go forward?

18 MR. HARRIS: I do.

19 THE COURT: Okay.

20 MR. HARRIS: Thank you.

21 THE COURT: So the question is do you remember him
22 being out of the office a lot during the Maxim transaction? If
23 you understand the question, I'll let you answer it; if you
24 want some more -- it's a little bit vague. If you want more
25 specificity, I'll ask counsel to rephrase it.

FC2VNEW5

Tornay - cross

1 THE WITNESS: Yes, I would prefer more specificity.
2 Thank you.

3 BY MR. HARRIS:

4 Q. Do you remember Mr. Newkirk being out of the office --

5 THE COURT: Let me put some questions.

6 During the period that you were working on the Maxim
7 transaction, were you familiar with Mr. Newkirk's presence or
8 absence from the office during that period?

9 THE WITNESS: Yes, I was familiar.

10 THE COURT: Okay.

11 From when to when are we talking about in terms of
12 your involvement?

13 THE WITNESS: I was involved from approximately the
14 end of July/early August until this October 18th closing. That
15 was the majority of the time I spent working on the
16 transaction.

17 THE COURT: During that period, were you, yourself in
18 the office most days?

19 THE WITNESS: Yes.

20 THE COURT: Was Mr. Newkirk in the office most days,
21 to your observation?

22 THE WITNESS: To my observation, he was out of the
23 office frequently.

24 THE COURT: Okay.

25 THE WITNESS: During that period.

FC2VNEW5

Tornay - cross

1 THE COURT: All right.

2 Anything else?

3 MR. HARRIS: I think that's it, your Honor.

4 THE COURT: All right.

5 MR. HARRIS: Oh, no, I'm sorry. I just meant on that
6 line.

7 THE COURT: I knew that. Hope springs eternal, but I
8 knew I shouldn't rely on that.

9 MR. HARRIS: All right.

10 BY MR. HARRIS:

11 Q. Am I correct that one of the things that a lawyer working
12 on a deal like this does is work on various documents?

13 A. Yes.

14 Q. One of the sets of documents you worked on on this
15 transaction were employment agreements?

16 A. I had worked on them in conjunction with Jay Warren.

17 Q. And who was Jay Warren?

18 A. Jay Warren is a partner at Bryan Cave who specializes in
19 employment law.

20 Q. Did there come a time when you asked Mr. Warren to send you
21 a form for employment agreements?

22 A. Yes, I believe there was.

23 Q. Is that something corporate lawyers do standardly, ask
24 other lawyers for a form?

25 A. Yes, it's common practice.

FC2VNEW5

Tornay - cross

1 Q. Why do you do that?

2 MS. PAUL: Objection. Relevance.

3 THE COURT: I'll allow it.

4 Q. And why do you do that?

5 THE COURT: I know that there's an argument some
6 counsel have made in some circumstances that this would require
7 an expert, but I don't think that's true and therefore will
8 allow the question.

9 MR. HARRIS: Thank you, your Honor.

10 Q. And why would you do that?

11 A. To look for or establish a foundation for an agreement
12 where you would look for a similar agreement that might fit
13 your use for the current transaction or matter.

14 Q. Is there anything improper about that?

15 A. No.

16 Q. By the way, did you ever see any employment agreement for
17 Harvey Newkirk with Maxim?

18 A. No, I did not.

19 Q. We spoke about Mr. Dietch before.

20 A. Yes.

21 Q. Mr. Dietch was an attorney for Alpha Media?

22 A. He was an attorney at Bodman which was Alpha Media's
23 counsel.

24 Q. And then the government asked you a series of questions on
25 direct about the transfer funds out of escrow to the Bodman

FC2VNEW5

Tornay - cross

1 firm. Do you recall that?

2 A. Yes.

3 Q. And I asked you some questions as well before lunch.

4 A. Yes.

5 Q. I'd like to hand you two emails which I marked as Defendant
6 Exhibit 759 and Defendant's Exhibit 760.

7 MR. HARRIS: Your Honor, may I approach?

8 THE COURT: Yes.

9 Q. If we could look at 759 first. That's an email from Calvin
10 Darden to yourself.

11 A. Yes. Dated November 7th, 2013 at 12:43 p.m.

12 Q. That's the day you were working on the escrow stuff?

13 A. Yes.

14 MR. HARRIS: Your Honor, I offer Defendant's Exhibit
15 759.

16 MS. PAUL: No objection.

17 THE COURT: Received.

18 (Defendant's Exhibit 759 received in evidence)

19 Q. May I show you 760 first, which is not evidence. That's an
20 email from yourself to Calvin Darden, Harvey Newkirk,
21 11/7/2013?

22 A. Yes, that is correct.

23 MR. HARRIS: Your Honor, I offer Defense Exhibit 760.

24 MS. PAUL: No objection.

25 THE COURT: Received.

FC2VNEW5

Tornay - cross

1 (Defendant's Exhibit 760 received in evidence)

2 Q. If we could look first at Defendant's Exhibit 759.

3 Mr. Darden in the top email is forwarding to you an
4 email from Laurence Dietch; correct?

5 A. Yes, that is correct.

6 Q. And in the email that's being forwarded, Laurence Dietch is
7 saying: Calvin -- the subject is email what I would like to
8 receive, right?

9 A. Yes.

10 Q. And then it starts with: Calvin. And then it has text.
11 I'm writing to confirm that Harvey Newkirk left me with
12 instructions. Correct?

13 A. Yes.

14 Q. And then it's Chaeri. Is that how you spell your name?

15 A. It is not the way I spell my name.

16 Q. Okay. And then it says: Cal, my preference is that your
17 father send the email before one. Right?

18 A. Yes.

19 Q. And what did you understand was being asked of you here?

20 A. I had understood that this request was to send this text to
21 Mr. Darden Senior at the calvinrdarden@gmail.com email address.

22 Q. And then if you could go to the next exhibit, Defendant's
23 Exhibit 760.

24 A. Yes.

25 Q. You, in fact, picked up the text that Mr. Dietch sent you

FC2VNEW5

Tornay - cross

1 and copied it into an email and sent it; correct?

2 A. That is correct, yes.

3 Q. Is that something lawyers commonly do, propose language?

4 MS. PAUL: Objection.

5 THE COURT: Sustained.

6 Q. Is that something that, in your experience as a lawyer, you
7 did, either send or received proposed language?

8 MS. PAUL: Objection.

9 THE COURT: Sustained.

10 Q. Did you believe there was anything wrong or improper in
11 taking Mr. Dietch's proposed language and using it?

12 MS. PAUL: Objection.

13 THE COURT: No, I'll allow it.

14 A. No, I did not think there was anything wrong with that.

15 MR. HARRIS: May I have one moment, your Honor?

16 THE COURT: Yes.

17 (Pause)

18 Q. Ms. Tornay, you met and spoke and emailed on multiple
19 occasions with Harvey Newkirk; is that right?

20 A. Yes.

21 Q. In that time did Harvey Newkirk ever ask you to do anything
22 that you thought was wrong?

23 MS. PAUL: Objection.

24 THE COURT: Sustained.

25 Q. Did you ever see Harvey Newkirk do anything you believed

FC2VNEW5

Tornay - cross

1 was wrong?

2 MS. PAUL: Objection.

3 THE COURT: Sustained.

4 MR. HARRIS: Your Honor, may I have a brief sidebar?

5 THE COURT: You can. Your chances of succeeding on
6 this one approach zero, but you can.

7 MR. HARRIS: This is the end of my exam, your Honor.

8 THE COURT: Well, then I don't want to deprive you of
9 that opportunity.

10 (Continued on next page)

FC2VNEW5

Tornay - cross

1 (At the side bar)

2 THE COURT: So let's start with basics.

3 She's being asked for an opinion. Only experts can
4 give opinions. She's a fact witness. This question doesn't
5 call for any fact; it calls for an opinion. That's No. 1.

6 No. 2, assuming she had been qualified as an expert in
7 right and wrong in this context, you would have had to call her
8 affirmatively as an expert, we would have had a *Daubert*
9 hearing, which I doubt she would have survived, etc., etc. I
10 can go on and on, but her opinion is neither here nor there.

11 MR. HARRIS: I understand your point.

12 I think I was asking her a personal opinion.

13 THE COURT: Her personal opinion is irrelevant.

14 MR. HARRIS: I understand.

15 THE COURT: Her personal opinion is irrelevant. Her
16 expert opinion, assuming she was qualified as an expert -- and
17 she seems like a lovely person, I'm sure we could perhaps
18 inquire into her expertise, but it would have to be the subject
19 of an expert report and all like that.

20 I did allow you, over objection, to bring out where
21 there was a custom and practice that could be said to be proper
22 or improper and that you have already brought out, but that's
23 as far as it goes. Okay?

24 MR. HARRIS: Okay. Thank you, your Honor.

25 MS. CHAUDHRY: Will we be able to ask that everything

FC2VNEW5

Tornay - cross

1 Mr. Newkirk instructed her to do was part of custom and
2 practice --

3 THE COURT: Pardon?

4 MS. CHAUDHRY: Would we be allowed to ask if
5 everything Mr. Newkirk instructed her to do was part of custom
6 and practice?

7 THE COURT: I think that's too broad and too vague.
8 To me it has its own problems. But you've already honed in on
9 the specifics that I think were of concern because you made it
10 part of your cross-examination.

11 MS. CHAUDHRY: Okay.

12 THE COURT: So I think we should let it go at that.

13 MS. CHAUDHRY: Okay.

14 MR. HARRIS: Okay. Thank you, your Honor.

15 (Continued on next page)
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FC2VNEW5

Tornay - redirect

1 (In open court)

2 MR. HARRIS: Your Honor, I believe I have no further
3 questions.

4 THE COURT: All right. Well, you're a man of your
5 word.

6 Redirect please.

7 MS. PAUL: Thank you, your Honor.

8 REDIRECT EXAMINATION

9 BY MS. PAUL:

10 Q. Ms. Tornay, you were asked some questions on
11 cross-examination about people who you spoke with in connection
12 with the Maxim deal. Do you recall those questions?

13 A. Yes.

14 Q. Did you ever speak to Calvin Darden Senior about this deal?

15 A. No.

16 Q. Did you ever receive Bank of America statements that
17 purported to show the stock --

18 MR. HARRIS: Objection. Objection.

19 Outside the scope.

20 THE COURT: Overruled.

21 Q. Did you ever receive Bank of America statements that
22 purported to show the stockholdings of Calvin Darden Senior?

23 A. I do not recall receiving those.

24 Q. Did you ever learn about a lawsuit filed by Open Gate
25 Capital in connection with a defaulted loan?

FC2VNEW5

Tornay - redirect

1 A. No.

2 MS. PAUL: Can we bring up Defense Exhibit 761 please.

3 Q. It's also up on your screen.

4 A. Yes.

5 Q. Do you recall being asked questions about this document on
6 cross-examination?

7 A. Yes.

8 Q. Do you recall sending this email to Mr. Dorman?

9 A. Yes.

10 Q. Do you recall working with Mr. Dorman on the Maxim deal?

11 A. I did not work directly with Mr. Dorman. He had requested
12 certain documents of me and this was one of those occasions.

13 Q. In this email you are responding to his request for
14 documents?

15 A. Yes, that's correct.

16 Q. You say in your email that Harvey will likely have the
17 fully-executed copies of these. What are you referring to?

18 A. I'm referring to the attachments to this email, which are
19 the extensions of the outside closing date, the date for the
20 transaction.

21 MS. PAUL: Can we bring up Government Exhibit 143
22 please.

23 Q. Do you recall being asked some questions about this
24 document on cross-examination, Ms. Tornay?

25 A. Yes.

FC2VNEW5

Tornay - recross

1 Q. In particular, do you recall being asked about the date of
2 February 3rd, 2011?

3 A. Yes.

4 MS. PAUL: Could we go to the second page of the
5 document.

6 Q. On what date did you notarize this document for
7 Mr. Newkirk?

8 A. On December 16, 2013.

9 MS. PAUL: One moment.

10 No further questions.

11 THE COURT: All right. Anything else?

12 MR. HARRIS: Very brief, your Honor.

13 THE COURT: Go ahead.

14 RECROSS EXAMINATION

15 BY MR. HARRIS:

16 Q. Ms. Tornay, you were just shown Defendant's Exhibit 761.

17 MR. HARRIS: Can we please put that up.

18 Q. You were asked some questions about whether you worked with
19 Mr. Dorman on the Maxim deal.

20 A. Yes.

21 Q. Am I correct that Mr. Dorman continued to work on the deal
22 until the end?

23 A. I learned that --

24 MS. PAUL: Objection. Calls for hearsay.

25 THE COURT: No.

FC2VNEW5

Tornay - recross

1 Did you personally observe him working on it?

2 THE WITNESS: His office was down the hall, so I did
3 not personally observe him working on it, no.

4 THE COURT: Sustained.

5 Q. Were you informed of the team -- Ms. Tornay, when you're an
6 associate on a case, when you're an associate on a case and
7 you're working with other people at Bryan Cave or a law firm,
8 is it important to know who the other members of the team are?

9 MS. PAUL: Objection.

10 THE COURT: Well, there are some objections to form,
11 but I will allow it to be answered yes or no.

12 A. Yes, it is important to know the team members on a matter
13 or transaction.

14 Q. Is that important to doing your job as a lawyer
15 representing your client?

16 A. It is.

17 Q. Did you have an understanding of Mr. Dorman's role on the
18 Maxim matter?

19 MS. PAUL: Objection. Calls for hearsay.

20 THE COURT: No, I think this is different.

21 I'll allow that.

22 Congratulations.

23 MR. HARRIS: Thank you, your Honor.

24 A. This was an atypical progression and it was not a team
25 environment. Mr. Dorman came into the transaction after I had

FC2VNEW5

Tornay - recross

1 spent the majority of time working on it. I spent most of my
2 time up until that October 18th date working directly with
3 Mr. Newkirk and I had learned that Mr. Dorman stepped in later.

4 So if you see this email, it's November 14th. I had
5 learned that he had stepped in later and I was playing less of
6 a role in that at that time.

7 Q. You understood Mr. Dorman to be playing a role?

8 A. I was not aware of what his specific role in the
9 transaction was at the time.

10 Q. Do you know from personal observation, do you know if
11 Mr. Dorman was involved with the McMahon part of the
12 transaction?

13 A. At that time, during the McMahon part of the transaction, I
14 worked directly with Mr. Chavkin and I had understood that
15 Mr. Dorman was involved at that time.

16 Q. Thank you.

17 MR. HARRIS: No further questions.

18 THE COURT: All right.

19 Recross -- or I'm sorry, re-redirect.

20 MS. PAUL: No, your Honor.

21 THE COURT: Nothing further.

22 Thank you so much. You may step down.

23 (Witness excused)

24 THE COURT: Please call your next witness.

25 MS. PAUL: Yes. The government calls Vincent Alfieri.

FC2VNEW5

Alfieri - direct

1 VINCENT ALFIERI,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 THE COURT: Counsel.

5 MS. PAUL: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MS. PAUL:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Where are you employed?

11 A. I'm a partner at Bryan Cave.

12 Q. For how long have you been a partner at Bryan Cave?

13 A. Since officially 2002.

14 Q. What are your duties and responsibilities?

15 A. I'm a lawyer. I practice litigation, commercial
16 litigation, and some employment law. And so I represent
17 clients in those areas.

18 Q. Do you have any other duties and responsibilities currently
19 at the firm?

20 A. Currently I handle lateral partner recruitment for the
21 firm.

22 Q. For how long have you held that position?

23 A. Since June of this year.

24 Q. In 2013 and 2014, did you have any additional duties and
25 responsibilities at Bryan Cave?

FC2VNEW5

Alfieri - direct

1 A. Yes, I was the managing partner of the New York office.

2 Q. And what did that entail?

3 A. The managing partner is the leader of the office. There
4 are other staff people who help operate the office, but the
5 managing partner is overall responsible for the running and
6 operation of the office.

7 Q. As the managing partner, did you assist with interviewing
8 and hiring other lawyers to work at the New York office?

9 A. I did.

10 Q. What was your role in that process?

11 A. For lateral partners, partner candidates, and for other
12 senior lawyers, I was directly involved with other partners in
13 the office and at the firm.

14 Q. What is a lateral candidate?

15 A. It's a lawyer who is already practicing probably at another
16 law firm, sometimes for a company as an in-house lawyer.

17 Q. Are you still the managing partner at Bryan Cave?

18 A. I am not.

19 Q. Why not?

20 A. Just the normal changeover. I had been the managing
21 partner for something like eight years, so we've just done a
22 changeover and there's another person in that role now.

23 Q. In 2013, did there come a time when you interviewed a
24 lawyer timed Harvey Newkirk to work at Bryan Cave?

25 A. Yes.

FC2VNEW5

Alfieri - direct

1 Q. Was Mr. Newkirk ultimately hired?

2 A. He was.

3 Q. Do you recall approximately when he was hired?

4 A. I think it was June of 2013.

5 Q. What position was he given?

6 A. Counsel.

7 Q. Where does that position fit in among the hierarchy of
8 legal positions at Bryan Cave?

9 A. It's in between partners and associates.

10 Q. Do you see Mr. Newkirk in the courtroom today?

11 A. I do.

12 Q. Where do you see him?

13 MR. HARRIS: We stipulate.

14 THE COURT: So stipulated.

15 Q. At what point during the interview process did you
16 interview Mr. Newkirk?

17 A. Multiple times throughout the process. I was probably one
18 of the first people to interview him when he was first brought
19 to our attention by a legal recruiter.

20 Q. During the interview process, what did you and Mr. Newkirk
21 discuss?

22 A. We discussed his background, his current position at
23 another law firm, his then-current position at another law
24 firm, the types of matters that he had worked on throughout his
25 career, and his client base.

FC2VNEW5

Alfieri - direct

1 Q. When you say "client base," what do you mean?

2 A. I mean the people and/or companies that he represented,
3 that he said that he represented as clients.

4 Q. Was that something that was important to you to know during
5 the hiring process?

6 A. Yes. We didn't actually have a need to hire a lawyer -- a
7 corporate lawyer who did the sorts of things that Mr. Newkirk
8 did unless that person also had what we would call a practice,
9 meaning that he had a client following that would be coming
10 along with him.

11 Q. And who, if anyone, did Mr. Newkirk tell you that he had
12 represented previously?

13 A. I can't remember all of them. There were numerous persons
14 and entities that he mentioned and that were also in writing in
15 various documents that he provided to us.

16 MS. PAUL: May I approach, your Honor?

17 THE COURT: Yes.

18 Q. Mr. Alfieri, I'm handing you a binder of documents which
19 contains exhibits that are in evidence in this case.

20 A. Okay.

21 Q. And I'll be asking you about them.

22 Please take a look at Government Exhibit 513 in your
23 binder.

24 A. Okay.

25 Q. Do you recognize that document?

FC2VNEW5

Alfieri - direct

1 A. Yeah. Yes, I do. It's a copy of an email from Beth
2 Johnson who was employed at Bryan Cave at that time as a staff
3 person working on lateral partner recruitment.

4 Q. Are you copied on this email?

5 A. I am.

6 Q. What's the date of the email?

7 A. April 25, 2013.

8 Q. What's attached to this email?

9 A. Mr. Newkirk's CV, his resume, and a business plan and a
10 list of representative transactions that Mr. Newkirk had worked
11 on.

12 Q. Turning to the business plan, what is that?

13 A. It's not uncommon for lateral candidates to provide the
14 firm with a written document that outlines both the clients
15 that that person thinks he has at the time and other possible
16 prospects, client prospects, that the person will probably
17 pursue if he were to join the firm. So that's what this is.
18 That's Mr. Newkirk's version of that. He's describing his
19 experience, existing business opportunities, and probably some
20 prospective opportunities as well.

21 Q. If you could turn to page 7 of the document, which I think
22 is the -- I believe it's the third page of the business plan.
23 Directing your attention to the bottom of the page, client No.
24 7.

25 A. Yes.

FC2VNEW5

Alfieri - direct

1 Q. Who is that?

2 A. That's Calvin Darden Senior.

3 Q. What, if anything, do you recall Mr. Newkirk telling you
4 about having represented Calvin Darden Senior?

5 A. That Mr. Darden Senior was a current client; that he had a
6 long-standing relationship with Mr. Darden Senior, the client,
7 as well as Calvin Darden Junior, Darden Senior's son.

8 Q. And turning to the next page of the document, does
9 Mr. Newkirk's description of his representation of Mr. Darden
10 Senior continue here at the top?

11 A. Yes. Yeah, he describes Mr. Darden Senior as a former
12 Senior vice president at UPS and a member of the board of
13 directors of other prominent organizations. And he was the CEO
14 of Darden Development Corporation -- Darden Development Group,
15 excuse me.

16 Q. Directing your attention to where it says "relationship."

17 A. Mm-hmm. He describes Mr. Darden Senior as a current
18 client.

19 Q. Do you recall him telling you that he had worked with the
20 Dardens on two transactions over the past three years?

21 A. I do.

22 Q. Did you rely on the information in this business plan in
23 deciding whether to hire Mr. Newkirk to the firm?

24 A. Yes.

25 Q. Following the interview process, did you recommend that

FC2VNEW5

Alfieri - direct

1 Mr. Newkirk be hired?

2 A. I did.

3 Q. Why?

4 A. After reviewing this, reviewing -- there are other
5 documents that Mr. Newkirk, at our request, provided, talking
6 about, again, his experience, his background, the clients that
7 he had, the clients that he hoped to bring and the practice
8 that he would hope to build at our firm. And after a number of
9 interviews by other partners of our firm, we all concluded --
10 and I certainly concluded -- that Mr. Newkirk would be a good
11 addition to the firm. And we offered him a position as
12 counsel.

13 Q. Please take a look at Government Exhibit 501.

14 Do you recognize that document?

15 A. Yes, I do.

16 Q. What is it?

17 A. It's another email from Beth Johnson. This is May 6, 2013.
18 And it's to me and another partner at Bryan Cave. And she's
19 including the lateral hire questionnaire. That's another
20 document that we typically get from every lateral candidate
21 either at the counsel level or at the partner level.

22 Q. Whose lateral hire questionnaire is attached to this email?

23 A. Mr. Newkirk.

24 Q. Was this a document that you relied on in determining
25 whether to hire Mr. Newkirk?

FC2VNEW5

Alfieri - direct

1 A. Yes.

2 Q. What's the purpose of having a candidate fill out a lateral
3 hire questionnaire?

4 A. It's the core document where all the relevant information
5 is brought together about the person's background, educational
6 background, other firms or companies that the person has worked
7 at, as well as a series of questions about whether the person
8 has had an ethical violation or whether is involved in any
9 lawsuits.

10 And then it also brings together all of the economic
11 information about existing clients, perhaps prospective
12 clients, as well as the person's compensation history and all
13 of that. And it is signed by the candidate. This one was
14 signed by Mr. Newkirk.

15 And then among the other documents and the other
16 interviews that we conduct, that becomes part of the basis of
17 our decision-making and it also is the document that we use to
18 take the next steps of conducting a full background check and
19 that sort of thing.

20 Q. If you could take a look at page 6 of Mr. Newkirk's lateral
21 hire questionnaire. And it's specifically part E, for-profit
22 enterprises. Do you see that?

23 A. Yes.

24 Q. What's the purpose of this section of the lateral hire
25 questionnaire?

FC2VNEW5

Alfieri - direct

1 A. We want to know if any partner or senior lawyer, like a
2 counsel, is involved in some other for-profit venture.

3 Our intention is that partners and counsel will really
4 be full-time, devote their full time and energy to their
5 position at the firm and the interests of the clients that they
6 will serve well at the firm.

7 Q. In this section, did Mr. Newkirk disclose having any
8 ownership interest in any companies?

9 A. Yeah. It says that -- I'm quoting: I have an ownership
10 interest in Invictus Ventures LLC. I am a multi-generational
11 family investment vehicle. And he goes on to say: I have not
12 represented the company in the past and at this time do not
13 plan to represent the company in the future.

14 Q. Why would it matter whether or not he had represented the
15 company in the past or didn't plan to represent the company in
16 the future?

17 MR. HARRIS: Objection.

18 Assumes facts not in evidence.

19 THE COURT: Overruled.

20 A. It matters to us to know if a senior lawyer that's going to
21 be coming into our firm has an interest in a company that might
22 become a client of ours. We actually do not want our lawyers,
23 our partners, and senior lawyers -- any lawyer really -- to
24 have an ownership interest in a company that we are going to
25 represent as a client because we believe that will create the

FC2VNEW5

Alfieri - direct

1 possibility of divided loyalty.

2 Q. What do you mean by "divided loyalty"?

3 A. The lawyer's first duty and first interest is supposed to

4 be on behalf of the clients that we represent and that's all.

5 And if the lawyer has a profit interest in the client, it

6 creates the possibility or at least the possibility of the

7 appearance that the lawyer could be more worried about his or

8 her own profit rather than the interests of the client.

9 Q. Do you know what Invictus Ventures LLC is?

10 A. I actually don't.

11 Q. And on this lateral hire questionnaire, did Mr. Newkirk

12 disclose having any ownership interest in any other companies?

13 A. Not that I recall; not in this section.

14 Q. In any other section?

15 A. I don't believe so.

16 Q. Do you know what Reign Entertainment Group is?

17 A. I believe it's an entity that's in some way associated with

18 Calvin Darden Senior.

19 Q. Do you recall Mr. Newkirk ever telling you that he had an

20 ownership interest in the Reign Entertainment Group?

21 A. I have no such recollection.

22 Q. After the completion of the interview process, did Bryan

23 Cave send a formal offer letter to Mr. Newkirk?

24 A. We did.

25 Q. Please take a look at Government Exhibit 514.

FC2VNEW5

Alfieri - direct

1 A. Okay.

2 Q. What is Government Exhibit 514?

3 A. That is the offer letter dated May 23, 2013 that we
4 prepared and sent to Mr. Newkirk. Shows his signature and our
5 signature.

6 Q. What position was being offered to Mr. Newkirk in this
7 letter?

8 A. As a counsel with Bryan Cave.

9 Q. What was his start date according to the letter?

10 A. June 10, 2013.

11 Q. What rate of compensation does the letter indicate that
12 Mr. Newkirk would receive?

13 MR. HARRIS: Excuse me one second. I think there's
14 some extraneous information at the top. Can we just redact
15 that?

16 One second, your Honor. Sorry.

17 Q. So Mr. Alfieri, what rate of compensation does the letter
18 indicate that Mr. Newkirk would receive?

19 A. An annual rate of \$300,000.

20 Q. Directing your attention to paragraph 4, what type of bonus
21 was Mr. Newkirk eligible for according to the letter?

22 A. Well, he was entitled to participate in any of the bonus
23 programs that we had available for counsel. Some of those at
24 that time had to do with whether or not the person was busy
25 enough, had enough work to show that he would be in that kind

FC2VNEW5

Alfieri - direct

1 of a bonus program. And another type of bonus program related
2 to the fees that that person might generate from clients that
3 that person brought to the firm.

4 In this case, both of those are discretionary bonuses.

5 In this case we had, based on a discussion with
6 Mr. Newkirk beforehand, set \$500,000 as the threshold of fees
7 to be received by clients brought to the firm by Mr. Newkirk as
8 the floor for fees that would trigger him being eligible for a
9 bonus based on fees.

10 Q. So what did Mr. Newkirk have to do to be eligible for a
11 consideration for that bonus?

12 A. There would have had to have been fee collections from
13 clients related to his activities that he brought to the firm,
14 it would have to be at least \$500,000.

15 Q. And directing your attention now to paragraph 6 of the
16 offer letter.

17 A. Yes.

18 Q. What is indicated about Mr. Newkirk's eligibility for
19 partnership consideration?

20 A. Right. He joined us as counsel. And in the letter we
21 indicated that he would first be eligible for partnership
22 consideration -- meaning we would assess it -- in the year
23 2014, with the earliest possible effective date of January 1,
24 2015.

25 Q. As managing partner of the firm at that time, were you

FC2VNEW5

Alfieri - direct

1 involved in the decision-making process regarding whether or
2 not to offer a lawyer a partnership at the firm?

3 A. Yes.

4 Q. With respect to Mr. Newkirk, what were you looking for
5 during the partner evaluation period?

6 MR. HARRIS: Objection. Relevance.

7 THE COURT: Sustained.

8 MS. PAUL: Your Honor, may we have a brief sidebar?

9 THE COURT: Yes.

10 (Continued on next page)

FC2VNEW5

Alfieri - direct

1 (At the side bar)

2 MS. PAUL: Your Honor, I believe this goes directly to
3 his motivation. One of the things --

4 THE COURT: There's no showing on the question put
5 that Mr. Newkirk was aware of these considerations, that's why
6 I sustained the objection. If something was said to
7 Mr. Newkirk, that's a different story. But that wasn't the
8 question put. You asked for his internal decision-making
9 process and that could not affect Mr. Newkirk's motivation
10 unless he was told it.

11 MS. PAUL: Understood. Thank you, your Honor.

12 THE COURT: Okay.

13 (Continued on next page)
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FC2VNEW5

Alfieri - direct

1 (In open court)

2 Q. Mr. Alfieri, after Mr. Newkirk was hired, did he work on a
3 deal involving the potential acquisition of *Maxim Magazine*?

4 A. Yes.

5 Q. Did Mr. Newkirk tell you who his client was in connection
6 with the Maxim deal?

7 A. Calvin Darden Senior.

8 Q. And what, if anything, did Mr. Newkirk tell you about
9 Calvin Darden Junior's involvement in the Maxim deal?

10 A. I had already known from the other documents we just
11 discussed that Mr. Newkirk identified Calvin Darden Junior as a
12 friend. And I think that's all I knew. That is largely what I
13 knew from Mr. Newkirk. Although at some point Mr. Newkirk
14 advised that Mr. Darden, Calvin Darden Junior, was working on
15 the deal, he was involved in the deal, but the client remained
16 Calvin Darden Senior.

17 (Continued on next page)

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FC26NEW6

Alfieri - direct

1 BY MS. PAUL:

2 Q. Directing your attention now to October of 2013, did there
3 come a time in October of 2013 when you asked Mr. Newkirk to
4 report about the Maxim deal during a partners meeting?

5 A. I did. We have regular monthly partners meetings. For
6 some of those meeting the counsel are invited. One of those
7 was coming up. I had heard that there had been -- the Maxim
8 deal had gotten to a point that I think had been reported in
9 the papers so I came to Mr. Newkirk.

10 MR. HARRIS: Objection.

11 There is no objection.

12 Q. Please continue.

13 A. With that background I came to Mr. Newkirk and asked him if
14 he would like to report on what sounded like a newsworthy
15 transaction.

16 Q. And in the weeks following that partners meeting, did
17 Mr. Newkirk bring to your attention any issues or problems with
18 the deal?

19 A. There -- we had at least one conversation, possibly more,
20 and I don't remember if I initiated or he initiated it; but I
21 learned from Mr. Newkirk that there were some problems going
22 forward on the deal and it sounded to me like there might be
23 some commercial litigation that might occur so we had a
24 conversation in which I advised him if he thought that was a
25 possibility that he should speak with one of our litigation

FC26NEW6

Alfieri - direct

1 partners to be prepared on behalf of the client.

2 Q. What was his response to that?

3 A. That he would do so if that were needed.

4 Q. Did he indicate that it was needed?

5 A. In that first conversation -- I think we had more than one
6 conversation. I think the first time we discussed it he
7 indicated that he would and he would look at it again if it
8 were needed and I believe we had a second conversation in which
9 he told me things were under control and he didn't need to
10 consult with one of our litigation partners.

11 Q. I would like to direct your attention now to November 12th
12 of 2013. Do you recall an issue arising that day with respect
13 to money released from a Bryan Cave escrow account in
14 connection with the Maxim deal?

15 A. Yes.

16 Q. What do you recall happening that day?

17 A. I don't really recall if I was advised on the 12th or on
18 the following day; but in essence what I was advised and what I
19 learned was that \$4.9 million I believe of moneys that were
20 being held in escrow by Bryan Cave had been released to one of
21 the parties or the attorneys for one of the parties in the
22 Maxim transaction and that was not with the permission of the
23 party that had deposited that money with us.

24 Q. Did you speak with Mr. Newkirk about the release of the
25 money?

FC26NEW6

Alfieri - direct

1 A. After I learned that there was this problem, yes, I went to
2 him directly.

3 Q. Did he bring the matter to your attention or did you go to
4 him with it?

5 A. I went to him with it.

6 Q. Did Bryan Cave conduct an investigation to determine
7 whether or not the e-mail authorizing the release of the money
8 was actually a fake e-mail?

9 A. Once we --

10 MR. HARRIS: Calls for a yes or no, your Honor.

11 A. Yes.

12 Q. What did the firm conclude as a result of that
13 investigation?

14 MR. HARRIS: Objection, your Honor.

15 THE COURT: Sustained.

16 Q. Mr. Alfieri, did you share with Mr. Newkirk the results of
17 Bryan Cave's investigation into that e-mail?

18 A. I did.

19 MR. HARRIS: Objection, same.

20 THE COURT: No. That question will be permitted as a
21 yes or no answer. The answer is yes. Put another question.

22 Q. What did you share with Mr. Newkirk?

23 MR. HARRIS: Objection, same.

24 THE COURT: I can't really tell, but I think we do
25 need a side bar.

FC26NEW6

Alfieri - direct

(Continued on next page)

FC26NEW6

Alfieri - direct

1 (At the side bar)

2 THE COURT: So I assume this is foundational to
3 something that Mr. Newkirk said or did. So what is it? Tell
4 me what the testimony is going to be.

5 MS. PAUL: It is not offered for its truth. The
6 results of the investigation it offered for conversation.

7 THE COURT: What?

8 MS. PAUL: He shared with Mr. Newkirk that there had
9 been a spoofed e-mail and Mr. Newkirk had no reaction.

10 THE COURT: Sustained on a 403 basis. I think the
11 inference is too problematic and it is not irrelevant but it is
12 somewhat speculative and the prejudice would be considerable.
13 Sustained.

14 MR. HARRIS: Thank you.

15 (Continued on next page)

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FC26NEW6

Alfieri - direct

1 (In open court; jury present)

2 BY MS. PAUL:

3 Q. Mr. Alfieri, can you please take a look at Government
4 Exhibit 340.

5 Do you recognize that document?

6 A. Yes.

7 Q. What is it?

8 A. It's an e-mail from Mr. Newkirk to me and to another
9 partner at Bryan Cave dated November 19, 2013, and it forwards
10 an attachment.

11 Q. Do you see the e-mail at the bottom half of the page?

12 A. I do.

13 Q. What is that e-mail?

14 A. That is what Mr. Newkirk is forwarding along with the
15 attachment. It's an e-mail dated November 11, 2013 from Mark
16 Weinberg to Mr. Newkirk.

17 Q. What is attached to the e-mail?

18 A. Certain Bank of America account statements.

19 Q. Was Mr. Newkirk the person to bring these bank statements
20 to your attention initially?

21 A. No.

22 Q. Prior to the issue with the release of the money on
23 November 12th, had you learned about the existence of these
24 bank statements?

25 A. No.

FC26NEW6

Alfieri - direct

1 Q. In the course of your discussions with Mr. Newkirk
2 regarding that released wire, did Mr. Newkirk bring up the
3 existence of these bank statements?

4 A. No.

5 Q. Now, following the issue with the release of the money, did
6 Mr. Newkirk bring to your attention any other issues or
7 problems with respect to the Maxim deal?

8 A. No.

9 Q. Who is Jay Dorman?

10 A. He was a Senior corporate partner at Bryan Cave. At that
11 time he was a corporate partner.

12 Q. Did there come a time when he became involved in the Maxim
13 deal?

14 A. Yes.

15 Q. Why?

16 A. Almost immediately after I learned about the unauthorized
17 transfer of the escrow funds, I made the decision that I wanted
18 the most senior corporate experienced partner I could that I
19 had available to me to now work on this deal.

20 Q. Are you familiar with an entity called Open Gate Capital?

21 A. I am now.

22 Q. Did there come a time when you learned about a lawsuit
23 filed by Open Gate in connection with the default of the loan?

24 A. Yes.

25 Q. Please take a look at Government Exhibit 506.

FC26NEW6

Alfieri - direct

1 Do you recognize that document?

2 A. Yes. It begins as an e-mail from another one of my
3 partners dated January 16, 2013, and it is to me and
4 Mr. Dorman.

5 Q. What is attached to the e-mail?

6 A. This is another e-mail. These are some internal e-mails
7 but there is another e-mail from a James Ellis to Mr. Newkirk
8 dated November 22, 2013, and then there is a copy of the docket
9 sheet for a lawsuit involving Open Gate Capital and Calvin
10 Darden Senior.

11 Q. Prior to receiving this e-mail in January of 2014, do you
12 recall having heard about the Open Gate lawsuit?

13 A. I had not heard about it.

14 Q. Did Mr. Newkirk ever mention Open Gate Capital to you at
15 all?

16 A. No.

17 Q. And did Mr. Newkirk ever mention any lenders filing
18 lawsuits in connection with the Maxim deal?

19 A. Not to me.

20 Q. Did Mr. Newkirk ever inform you that if he accepted process
21 of lawsuit on behalf of Calvin Darden Senior not --

22 MR. HARRIS: Objection. Leading, assuming facts not
23 in evidence.

24 THE COURT: Overruled.

25 A. Not to me.

FC26NEW6

Alfieri - direct

1 Q. Following the issue with the released money on
2 November 12th, were there continued efforts to close the Maxim
3 deal?

4 A. Yes.

5 Q. Why?

6 A. We believed that we represented Calvin Darden Senior. We
7 believe we had a client with interest at stake in that
8 transaction and we believed we had a duty to try to resolve the
9 issues, resolve the questions and bring that matter to
10 conclusion on his behalf.

11 Q. Did Mr. Newkirk tell you that Calvin Darden Senior was
12 still involved in the deal?

13 A. Yes.

14 Q. Did Mr. Newkirk tell you that he was in contact with
15 Mr. Darden Senior in connection with the deal?

16 MR. HARRIS: Objection, leading.

17 THE COURT: Overruled.

18 A. Yes.

19 Q. Had you believed that Mr. Calvin Darden Senior was no
20 longer involved in the deal, what would you have done?

21 MR. HARRIS: Objection.

22 THE COURT: Sustained.

23 Q. Please take a look at Government Exhibit 507.

24 A. Yes.

25 Q. What is the date e-mail?

FC26NEW6

Alfieri - direct

1 A. It is an e-mail from Mr. Newkirk dated January 31, 2014.

2 Q. What is attached to the e-mail?

3 A. It is a bill. It is a Bryan Cave bill for service rendered
4 in connection with the Maxim deal.

5 Q. Were you aware at that time that Mr. Newkirk had sent out a
6 bill in connection with the Maxim deal?

7 MR. HARRIS: Objection.

8 Sorry, withdrawn.

9 A. I don't think so.

10 THE COURT: No. I am sorry.

11 You withdrew the objection?

12 MR. HARRIS: One second, your Honor.

13 I am going to object again.

14 THE COURT: Pardon?

15 MR. HARRIS: I am going to object again.

16 THE COURT: Waived.

17 You may answer.

18 A. I actually don't recall. I don't think I knew at that
19 time.

20 Q. If we can take a look at page 1 of the bill.

21 A. Of the bill?

22 Q. Yes.

23 A. Yes.

24 Q. Who is this bill addressed to?

25 A. Calvin Darden Senior care of The Reign Entertainment Group,

FC26NEW6

Alfieri - direct

1 LLC.

2 Q. At what address?

3 A. 375 Park Avenue, New York, New York.

4 Q. What is the total bill for?

5 A. The total amount of the bill?

6 Q. Yes. Directing your attention to where it says "statement
7 total,' what is the total?

8 A. \$498,059.94.

9 Q. Based on the amount of this bill, was Mr. Newkirk eligible
10 for consideration for a discretionary bonus at the firm?

11 A. Only if it was collected.

12 Q. I would like to direct your attention now to February of
13 2014.

14 A. Sorry. What date?

15 Q. February 14. Did there come a time February 2014 when
16 Calvin Darden Junior was arrested in connection with the Maxim
17 deal?

18 A. So I understand, yes.

19 MS. PAUL: May I approach, your Honor?

20 THE COURT: Yes.

21 Q. I have handed you a document that has been marked for
22 identification as Government Exhibit 181, Mr. Alfieri. Please
23 take a look at that document and let me know if you recognize
24 it.

25 A. Yes. It's a printout of a series of e-mails amongst a

FC26NEW6

Alfieri - direct

1 number of us at Bryan Cave including Mr. Newkirk.

2 Q. What is the date on this e-mail chain?

3 A. It starts at February 14, 2014.

4 Q. Did you participate in this e-mail exchange with
5 Mr. Newkirk?

6 A. I did.

7 MS. PAUL: The government offers Government
8 Exhibit 181 into evidence.

9 MR. HARRIS: May I have one moment, your Honor?

10 THE COURT: Yes.

11 (Pause)

12 MR. HARRIS: No objection, your Honor.

13 THE COURT: Received.

14 (Government's Exhibit 181 received in evidence)

15 BY MR. HARRIS:

16 Q. Mr. Alfieri, directing your attention to the bottom e-mail
17 on page 1, which is an e-mail from you on February 14th of
18 2014.

19 Do you see that?

20 A. I do.

21 Q. This is an e-mail to you to Mr. Newkirk?

22 A. Correct.

23 Q. What did you ask Mr. Newkirk for in this e-mail?

24 A. I asked him to confirm all the e-mail addresses that he
25 knows of for Calvin Darden Senior and Calvin Darden Junior and

FC26NEW6

Alfieri - direct

1 to provide whatever telephone numbers he has for Calvin Darden
2 Junior.

3 Q. And taking a look at the response for Mr. Newkirk, which is
4 the e-mail just above --

5 A. Yes.

6 Q. -- how did Mr. Newkirk respond?

7 A. He replied to me with a copy to one of my other partners
8 and he said -- he indicated two e-mail addresses for Senior and
9 one e-mail address for Junior with a telephone number for
10 Junior.

11 Q. And did Mr. Newkirk indicate that any of these e-mail
12 addresses were shared between Mr. Newkirk Junior and Mr. Darden
13 Senior?

14 MR. HARRIS: Objection. The document speaks for
15 itself.

16 THE COURT: Sustained.

17 Q. Did had Newkirk ever tell you that any of these e-mail
18 addresses were shared between Calvin Darden Senior and Calvin
19 Darden Junior?

20 MR. HARRIS: Objection.

21 THE COURT: Overruled.

22 A. Not that I recall.

23 MS. PAUL: One moment.

24 No further questions.

25 THE COURT: Cross-examination.

FC26NEW6

Alfieri - cross

1 MR. HARRIS: Your Honor, I think I will go more than
2 15 minutes. Would you prefer me to start?

3 THE COURT: Why don't we get started.

4 MR. HARRIS: Happy to.

5 CROSS-EXAMINATION

6 BY MR. HARRIS:

7 Q. Mr. Alfieri, you were excited about having Harvey Newkirk
8 join Bryan Cave?

9 A. We were pleased to have him join us.

10 Q. He was at a good law firm, K&L Gates?

11 A. Correct.

12 Q. Prior to that he had been to another law firm Thelen Reid?

13 A. Yes.

14 Q. He had gone to Columbia Law School?

15 A. Yes, he had.

16 Q. He was a graduate from Cornell?

17 A. Yes.

18 Q. One second, please.

19 Mr. Alfieri, am I correct that you were aware of the
20 representation for the purchase of Maxim?

21 A. That I was aware of the --

22 Q. That Bryan Cave was going to represent the Dardens in
23 connection with the purchase of Maxim?

24 A. Yes, I was aware of it.

25 Q. Does Bryan Cave require this there be an engagement letter

FC26NEW6

Alfieri - cross

1 for all clients?

2 A. Yes.

3 MR. HARRIS: Your Honor, may I approach?

4 THE COURT: Yes.

5 Q. Mr. Alfieri, I am showing you what has been marked
6 Defendant's Exhibit 290. It's an engagement letter on Bryan
7 Cave letterhead with The Reign Entertainment Group.

8 Do you see that?

9 A. Yes.

10 MR. HARRIS: Your Honor, I offer Defendant
11 Exhibit 290.

12 MS. PAUL: No objection.

13 THE COURT: Received.

14 (Defendant's Exhibit 290 received in evidence)

15 BY MR. HARRIS:

16 Q. Mr. Alfieri, am I correct that the engagement is not
17 between Harvey Newkirk and the client, but between Bryan Cave
18 and the client?

19 A. That's correct.

20 Q. That is true for all of Bryan Cave's engagement letters?

21 A. Absolutely.

22 Q. If a payment is made by the client, that payment goes to
23 Bryan Cave; correct?

24 A. Of course.

25 Q. And Bryan Cave is responsible for the provision of legal

FC26NEW6

Alfieri - cross

1 services under the agreement; correct?

2 A. Through our lawyers, yes.

3 Q. And the government asked you some questions about
4 Mr. Newkirk's offer letter.

5 Do you recall that?

6 A. I do.

7 Q. Under his offer letter, Mr. Newkirk --

8 MR. HARRIS: Can we put that up. It is 514. Can we
9 not put the very top up. Thank you.

10 Q. Paragraph one says that Mr. Newkirk will be a lawyer,
11 employee of the firm; correct?

12 A. That is correct.

13 Q. And he is counsel?

14 A. Yes.

15 Q. And am I right that Mr. Newkirk had been an associate at
16 Bryan Cave -- sorry, at K&L Gates?

17 A. That is what we were advised, yes.

18 Q. Counsel is a step up?

19 A. Yes. Not all the way to partner but a step up.

20 Q. And then it says that he is going to be compensated with
21 \$300,000; correct?

22 A. That is the salary, right.

23 Q. That does not depend on bringing in business or doing
24 anything else?

25 A. Well, it depends on his continued good performance and so

FC26NEW6

Alfieri - cross

1 on, but it is not directly connected to fees received or
2 anything like that.

3 Q. That is what he is going to make as long as he --

4 A. As long as he is an employee in good standing he is going
5 to make \$300,000.

6 Q. That is what he is going to get.

7 Paragraph four is he is going be eligible to
8 participate in bonus programs and that it is based on a bonus
9 here in excess of 500,000; is that right?

10 A. I am sorry. I didn't understand the question.

11 Q. I didn't ask a great question.

12 First of all, it is discretionary. What does that
13 mean?

14 A. All bonuses are subject to the employer assessing all of
15 the data and then it's in the employer's discretion about
16 whether or not to award the bonus.

17 Q. Someone can bring in a lot of business but if you don't
18 like something else about their performance, Bryan Cave does
19 not feel obligated to give a bonus?

20 A. That is correct.

21 Q. This is not a commission schedule. This does not say if
22 you bring in X business, you will get Y?

23 A. He was not a salesman it wasn't a commission.

24 Q. In fact, it specifically talks about contributions to
25 servicing the existing clients of the firm; is that right?

FC26NEW6

Alfieri - cross

1 A. Yes, it does.

2 Q. It also talks about extraordinary contributions of practice
3 of the group?

4 A. Yes.

5 Q. So it is also important that you do good work?

6 A. Extremely.

7 Q. And then it says if we skip to paragraph six -- I am not
8 skipping anything important. It is important but it is
9 benefits.

10 Paragraph six, that is one that talks about
11 partnership consideration; is that right?

12 A. Correct.

13 Q. And am I right that Bryan Cave agreed to give Harvey
14 Newkirk accelerated consideration for partnership?

15 A. We agreed to look at his performance in the year 2014 and
16 since he only joined us in June of 2013 that was a little
17 earlier than we would normally like.

18 Q. That is otherwise fairly standard. You bring someone in as
19 counsel, give them an evaluation period and determine whether
20 you will offer them a partnership in the firm?

21 A. For those counsel who are brought in with a partnership
22 opportunity. It is entirely possible you could -- we could
23 hire a lateral counsel and there is no partnership opportunity
24 so...

25 Q. It also says offer is contingent upon satisfactory due

FC26NEW6

Alfieri - cross

1 diligence checks and reference checks. That is paragraph
2 eight.

3 A. Yes.

4 MR. HARRIS: Your Honor, I am going to go onto a new
5 topic.

6 THE COURT: We'll give the jury their midafternoon
7 break. We'll take a 15-minute break at this time.

8 (Jury excused)

9 THE COURT: Mr. Alfieri, you can step down and we'll
10 see you in 15.

11 THE WITNESS: Thank you.
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FC26NEW6

Alfieri - cross

1 (In open court; jury not present)

2 THE COURT: Please be seated.

3 How much longer do you have?

4 MS. CHAUDHRY: I do not have long, your Honor. Maybe
5 15 minutes.

6 THE COURT: Then we have one other government witness.

7 MR. ADAMS: Two, your Honor. One is very short.

8 THE COURT: All right. Now, other than the defendant,
9 and we'll hear about that at the close of the day, what other
10 witnesses, if any, does the defense want to call?

11 MS. CHAUDHRY: Your Honor, we would like to call Mike
12 Brown. Should I tell you who he is?

13 THE COURT: Sorry?

14 MS. CHAUDHRY: Should I tell you who he is, or list
15 the names?

16 THE COURT: Just give the names first.

17 MS. CHAUDHRY: Mike Brown.

18 THE COURT: Okay.

19 MS. CHAUDHRY: John Parker, Paul Corvino, Andrew
20 Nikou.

21 THE COURT: Sorry. I am having trouble hearing you.

22 MS. CHAUDHRY: Andrew Nikou.

23 THE COURT: So four altogether?

24 MS. CHAUDHRY: That is our current intention.

25 THE COURT: Roughly how long?

FC26NEW6

Alfieri - cross

1 MS. CHAUDHRY: Sorry, your Honor. The government and
2 I have not been able to reach a stipulation yet on the 3500.
3 So if we cannot, then I might call some of their agents.

4 THE COURT: Okay. So putting that last aspect aside,
5 roughly how long do you think those witnesses will be?

6 MS. CHAUDHRY: A total of time would be about four
7 hours or less and that's actual time not breaks.

8 THE COURT: You think each of them will take an hour,
9 or are you saying with the cross it will take an hour?

10 MS. CHAUDHRY: With the cross.

11 THE COURT: I see. I think counsel therefore needs to
12 assume, if the defendant does not take the stand that we will
13 begin summations tomorrow afternoon and conclude them on Friday
14 morning. So we'll talk more at the end of the day, but I just
15 wanted to get an idea of where we stood schedule-wise so I
16 could advise the jury.

17 Very good. Thanks a lot.

18 (Recess)

19 THE COURT: I will hand out a draft verdict form.

20 THE DEPUTY CLERK: Can I bring in the jury?

21 THE COURT: Please and the witness.

22 You said 15 minutes.

23 MR. HARRIS: 10 to 20, if I could have that latitude.

24 THE COURT: Of course. I will give you all the
25 latitude you want; but I know after I was such a great help to

FC26NEW6

Alfieri - cross

1 you all afternoon, you will want to do it in 10.

2 MR. HARRIS: That's fine. I think they are going to
3 object to my first document.

4 (Continued on next page)

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FC26NEW6

Alfieri - cross

1 (In open court; jury present)

2 THE COURT: I hope you all appreciated that I
3 especially arranged for it to be lousy weather so you didn't
4 mind being inside.

5 Go ahead, counsel.

6 BY MR. HARRIS:

7 Q. Mr. Alfieri, the government showed you Government
8 Exhibit 507, which is the invoice.

9 Do you recall that?

10 A. Yes.

11 MR. HARRIS: Can you put that up, please.

12 Q. Who makes the bills at Bryan Cave?

13 A. You mean who prepares them?

14 Q. Who prepares them?

15 A. Probably someone in accounting. Sometimes the secretary.

16 Q. The accounting department has access to all the bills;
17 correct?

18 A. I couldn't hear you.

19 Q. Someone in the accounting department have access to all the
20 bills that get sent out?

21 A. Yes.

22 Q. Is the bill usually sent to the client by the lawyer in
23 charge of the case?

24 A. Most of the time. Sometimes there will be someone else,
25 but most of the time.

FC26NEW6

Alfieri - cross

1 Q. Do you see all the bills that go out?

2 A. No.

3 Q. If you wanted to, you could see a bill?

4 A. Sure.

5 MR. HARRIS: Can we please put up Government
6 Exhibit 513.

7 Q. If you turn to page 7, please. This is part of the
8 business and practice development plan you were asked some
9 questions about?

10 A. Yes.

11 Q. Item seven talks about Calvin Darden Senior; is that right?

12 A. Yes.

13 Q. And there is a bunch of other clients listed; right?

14 A. Yes.

15 Q. Under Calvin Darden Senior, Mr. Newkirk says that he is on
16 the board of certain companies and then he estimates the value
17 of the relationship over the next 12 to 18 months of 75,000 to
18 100,000; is that right?

19 A. Yes. That is what it says.

20 Q. Thank you.

21 Mr. Alfieri, you testified that you kept generally
22 abreast -- I don't know if that was your exact word -- is it
23 fair to say you kept generally abreast of the Maxim deal?

24 A. No, I don't think I said that. Prior to November when we
25 had the problem with the release of the escrow funds, I was not

FC26NEW6

Alfieri - cross

generally or regularly abreast.

(Continued on next page)

FC2VNEW7

Alfieri - cross

1 Q. Let me try again.

2 Is it fair to say you were aware of it?

3 A. Absolutely.

4 Q. In fact, on direct you testified that you saw announcement
5 of the deal in certain newspapers; correct?

6 A. Yeah, somewhere.

7 MR. HARRIS: Your Honor, may I approach?

8 THE COURT: Yes.

9 Q. Mr. Alfieri, showing you what's been marked for
10 identification only as Defendant's Exhibit 254, that's an email
11 from yourself to Harvey Newkirk on September 19, 2013, subject:
12 Forward Articles of Maxim Sales.

13 Do you see that?

14 A. Yes.

15 Q. Then there's some attachments.

16 A. Correct.

17 MR. HARRIS: Your Honor, I offer Defense Exhibit 254.

18 MS. PAUL: Objection. Hearsay. Relevance.

19 MR. HARRIS: Not offered for the truth.

20 THE COURT: So the cover email is received as an
21 ordinary business record, the rest is not received.

22 MR. HARRIS: Thank you your Honor.

23 (Defendant's Exhibit 254 received in evidence)

24 MR. HARRIS: May I publish the cover email?

25 THE COURT: Yes.

FC2VNEW7

Alfieri - cross

1 MR. HARRIS: And then we will redact the document to
2 make sure -- thank you. I'm just going to show the cover
3 email.

4 THE COURT: Okay.

5 MR. HARRIS: Thank you.

6 Can we put up the cover email please.

7 Q. This is an email that you sent to Harvey Newkirk; is that
8 right?

9 A. Yes.

10 Q. You attached various articles from newspapers; is that
11 right?

12 A. Yes.

13 Q. Are these the articles that you were referring to in your
14 direct exam?

15 A. I'm pretty sure.

16 Q. That's *The Wall Street Journal* and *Bloomberg, Atlanta*
17 *Constitution* and some others?

18 A. Those are the ones that are attached to this, yes.

19 Q. And then you're saying: Harvey, Alison shared these with
20 me. Who's Alison?

21 A. Alison is Alison Gordon, then and now a marketing and
22 business development staff person at the firm.

23 Q. Then you say: Just want to say congrats on the deal.
24 Let's catch up this week or next. Is that right?

25 A. Yes.

FC2VNEW7

Alfieri - cross

1 Q. And did you catch up?

2 A. I'm sure I did.

3 Q. Thank you.

4 You testified on direct about becoming aware about the
5 issue with the funds that had been wired to the escrow at the
6 Bodman firm; is that right?

7 A. Yes.

8 Q. You personally spoke with Mr. Weinberg; is that right?

9 A. He called me, yes.

10 Q. He called you a number of times, right?

11 A. Oh, yes. Over what period, yes.

12 Q. And your emails with him?

13 A. Pardon me?

14 Q. And your emails with him?

15 A. Oh, yes.

16 Q. It was a vigorous email?

17 A. Didn't feel strenuous. We had a lot of emails.

18 Q. A lot of emails. All right.

19 And then after that, you asked that Jay Dorman become
20 involved in the Maxim deal?

21 A. I wouldn't say after that. I would say it was within a day
22 or two or a couple of days from when the money was wired that I
23 asked Jay to become involved in the matter.

24 Q. Mr. Dorman was someone you trusted?

25 A. Yes.

FC2VNEW7

Alfieri - cross

1 Q. You viewed Mr. Dorman as a highly competent corporate
2 attorney?

3 A. I did and do.

4 Q. Thereafter, Mr. Dorman tried to work to close the Maxim
5 deal; is that right?

6 A. He did.

7 Q. He continued to work with Harvey Newkirk to do so; is that
8 right?

9 A. Harvey remained on the matter and I expected that he would
10 work through Jay Dorman.

11 Q. You also contacted the -- you at Bryan Cave also contacted
12 the Secret Service about the issue with the funds?

13 A. Almost immediately. Some of us contacted law enforcement
14 generally, Secret Service, probably through the bank as well.
15 I think one of us may have reached out to the FBI. We wanted
16 law enforcement to be on top of it right away.

17 Q. And you spoke to Harvey Newkirk about that, right?

18 A. I told him that, yeah.

19 Q. Did all those things promptly, right?

20 A. Yes, we did.

21 Q. You believe that was an appropriate response?

22 A. To involve law enforcement? Yes.

23 Q. To do all those things: Add Mr. Dorman, speak to law
24 enforcement, talk to the bank, inform Mr. Newkirk.

25 A. Yes.

FC2VNEW7

Alfieri - cross

1 Q. The firm could have stopped its representation of Reign or
2 the Dardens at that point, right?

3 A. It could have withdrawn, yes.

4 Q. The firm chose not to?

5 A. We believe we had a client named Calvin Darden Senior.

6 Q. Mr. Dorman thereafter would periodically keep you informed
7 of what was going on?

8 A. Yes.

9 Q. And send you emails and things like that?

10 A. Periodically.

11 Q. You were aware that Jay Dorman negotiated with Larry Dietch
12 who's the counsel for Alpha Media?

13 A. Yes.

14 MS. PAUL: Objection.

15 A. Sorry.

16 THE COURT: Sustained.

17 Q. Were you copied on emails between Mr. Dorman and Alpha
18 Media?

19 A. I believe I was.

20 Q. You were also copied on emails between Mr. Dorman and the
21 McMahons or other interested parties?

22 A. I don't know. I don't recall sitting here now whether I
23 was.

24 Q. You sometimes forwarded emails that had been sent to the
25 McMahons?

FC2VNEW7

Alfieri - cross

1 A. Probably. I mean could have been. That would fit
2 generally within Mr. Dorman was periodically keeping me in the
3 loop on what was going on.

4 Q. Mr. Alfieri, am I correct that there came a time when
5 Calvin Darden Senior came to Bryan Cave and asked to be
6 provided with all of Bryan Cave's files related to the Maxim
7 deal?

8 MS. PAUL: Objection.

9 THE COURT: Ground.

10 MS. PAUL: Hearsay. Relevance. Outside the scope.

11 THE COURT: I thought it was his personal knowledge.

12 If you want to rephrase, if it is directed at personal
13 knowledge, otherwise I would sustain the objection.

14 MR. HARRIS: It is and I'll rephrase, your Honor.

15 THE COURT: Did Mr. Calvin Darden Senior meet with you
16 at some point?

17 THE WITNESS: No.

18 THE COURT: No.

19 BY MR. HARRIS:

20 Q. Did an attorney for Mr. --

21 THE COURT: Pardon?

22 Q. Did an attorney for Mr. Calvin Darden Senior speak with you
23 at some point?

24 A. With me?

25 Q. Yes.

FC2VNEW7

Alfieri - cross

1 A. No.

2 Q. Do you know whether Bryan Cave provided the files on this
3 deal to Mr. Darden Senior's lawyer?

4 MS. PAUL: Objection. Calls for hearsay.

5 MR. HARRIS: I believe this is personal knowledge.

6 THE COURT: Well, were you asked at any time to
7 approve or otherwise comment on responding to a request for
8 documents on behalf of Calvin Darden Senior?

9 THE WITNESS: I don't know that I was asked to
10 approve, but I was probably asked to comment about it.

11 THE COURT: All right. What was said to you and what
12 did you say in response? Was this an email conversation, an
13 in-person conversation, or whatever?

14 THE WITNESS: Your Honor, honestly I don't remember
15 specifically.

16 THE COURT: All right. Very good.

17 MR. HARRIS: Can I ask the one question?

18 THE COURT: There's no harm in asking.

19 MR. HARRIS: On the same topic.

20 THE COURT: Go ahead.

21 I have a question: Which is harder, being a witness
22 or being a managing partner of a law firm?

23 Go ahead, counsel.

24 THE WITNESS: Shall I answer that?

25 THE COURT: No.

FC2VNEW7

Alfieri - redirect

1 BY MR. HARRIS:

2 Q. In your role as managing partner of the New York office,
3 did you approve providing documents related to the Maxim deal
4 to Calvin Darden Senior or his counsel?

5 A. I don't know that I was asked to approve or that I really
6 needed to approve, but I'm aware that that happened.

7 MR. HARRIS: Your Honor, may I have one moment?

8 THE COURT: Yes.

9 (Pause)

10 MR. HARRIS: No further questions.

11 THE COURT: All right. Redirect.

12 MS. PAUL: Yes, your Honor.

13 Can we bring up Defense Exhibit 290 please.

14 REDIRECT EXAMINATION

15 BY MS. PAUL:

16 Q. Mr. Alfieri, you recall being asked questions about Defense
17 Exhibit 290 on cross-examination?

18 A. I do.

19 Q. This is the engagement letter with The Reign Entertainment
20 Group?

21 A. Correct.

22 Q. Now, who from Bryan Cave signed this engagement letter?

23 A. Mr. Newkirk.

24 Q. Did anyone else from Bryan Cave sign it?

25 A. No.

FC2VNEW7

Alfieri - recross

1 Q. Now, you testified on cross-examination that the firm
2 continued with the Maxim deal even after the issue with
3 Mr. Weinberg's money because you believed you had a client in
4 Calvin Darden Senior, is that your testimony?

5 A. Correct.

6 Q. Why did you believe you had a client in Calvin Darden
7 Senior?

8 A. That was the name of the client in our system. That's how
9 our matter had been opened, with that client. And Mr. Newkirk
10 had told me so.

11 MS. PAUL: No further questions.

12 THE COURT: Anything else?

13 MR. HARRIS: Two questions.

14 RECROSS EXAMINATION

15 BY MR. HARRIS:

16 Q. The offer letter, Bryan Cave acted as -- the offer letter
17 for Mr. Newkirk, Bryan Cave sent that letter to Mr. Newkirk;
18 correct?

19 A. I guess we did. I don't mean to fence with you. I don't
20 remember, maybe he was around and we handed it to him. I don't
21 know if we sent it.

22 Q. Bryan Cave wrote the letter and provided it to Mr. Newkirk?

23 A. Yes.

24 Q. And that was the terms of the deal that Bryan Cave made
25 with Mr. Newkirk?

FC2VNEW7

Alfieri - recross

1 A. It was the terms of -- the core terms of his employment,
2 yes.

3 Q. Would the firm have turned over documents to Calvin Darden
4 Senior if the firm believed he was not the client?

5 MS. PAUL: Objection. Calls for speculation.

6 THE COURT: Sustained.

7 Having now had three questions of your allotted two,
8 do you want a fourth? Go ahead.

9 Q. Am I right that client files are protected by
10 attorney-client privilege?

11 A. You would want to conduct a seminar on attorney-client
12 privilege. Not necessarily every single thing in a file is
13 protected by attorney-client privilege. Most of it is.
14 Depends.

15 Q. Bryan Cave does not turn over its files to anyone who asks?

16 MS. PAUL: Objection.

17 THE COURT: Sustained.

18 Q. Bryan Cave would turn over -- when you were aware of the
19 turning over of the files, that was on the basis that
20 Mr. Darden had rights and was a client; correct?

21 MS. PAUL: Objection.

22 THE COURT: At the time that the files were turned
23 over, whom did you believe was the client?

24 THE WITNESS: As far as I can recall, your Honor,
25 Calvin Darden Senior.

FC2VNEW7

Alfieri - recross

1 THE COURT: Okay.

2 MR. HARRIS: Thank you, your Honor.

3 No further questions.

4 THE COURT: Okay. Anything else?

5 MS. PAUL: No, your Honor.

6 THE COURT: Thank you so much. You may step down.

7 THE WITNESS: Thank you, your Honor.

8 (Witness excused)

9 THE COURT: Please call your next witness.

10 MR. ADAMS: Your Honor, we may have a stipulation

11 Mr. Harris is reviewing that would obviate one witness.

12 In the meantime, I will read another stipulation

13 because I lost the coin toss.

14 Government Exhibit 907 is a true and correct copy of

15 AT&T call records for the telephone with the call number

16 914-325-4523, which was at all times relevant to this case

17 subscribed to Bryan Cave LLP and controlled by Harvey Newkirk,

18 the defendant.

19 The information contained in Government Exhibit 907

20 was recorded by AT&T at or near the time the activities took

21 place, was kept in the regular course of AT&T's business

22 activities, and it was the regular practice of AT&T to record

23 the information. These records reflect accurate dates and

24 times of all communications reflected therein with times

25 provided as UTC as described in Government Exhibit 102.

FC2VNEW7

Garvey - direct

1 Government Exhibit 907 and this stipulation, which is
2 Government Exhibit 104, may be received into evidence as
3 government exhibits at trial.

4 And with that, the government offers Exhibits 104 and
5 907.

6 THE COURT: Received.

7 (Government's Exhibits 104, 907 received in evidence)

8 MR. ADAMS: Thank you, your Honor.

9 The government calls Elizabeth Garvey.

10 ELIZABETH GARVEY,

11 called as a witness by the Government,

12 having been duly sworn, testified as follows:

13 THE COURT: Counsel.

14 MR. ADAMS: Thank you, your Honor.

15 DIRECT EXAMINATION

16 BY MR. ADAMS:

17 Q. Good afternoon, Ms. Garvey.

18 Where are you employed?

19 A. Bryan Cave.

20 Q. What is your title at Bryan Cave?

21 A. The accounting manager of the New York office.

22 Q. And on a day-to-day basis generally, what types of
23 activities do you supervise?

24 A. I supervise a staff of five and we handle the billings,
25 collections, cash receipts, and escrow for the New York office.

FC2VNEW7

Garvey - direct

1 Q. In general, can you describe what sort of supervision you
2 have over the Bryan Cave escrow functions.

3 A. Again, I supervise the staff that handle the day-to-day
4 operations. I would handle some general questions that came in
5 or asking for wire information.

6 Q. Do you have access to view the escrow account history for
7 particular clients --

8 A. Yes.

9 Q. -- at Bryan Cave?

10 A. Yes.

11 Q. Are records of monies received into Bryan Cave's escrow
12 account logged by people with knowledge of the amount of funds
13 being sent to Bryan Cave's escrow account?

14 A. Yes.

15 Q. Are those records maintained in the normal course of Bryan
16 Cave's business activities?

17 A. Yes.

18 Q. Are those records logged at the time that monies are
19 received into the Bryan Cave escrow account?

20 A. Yes.

21 Q. In the course of your duties, have you become familiar with
22 a client matter number for a matter associated with the
23 acquisition of *Maxim Magazine*?

24 A. Yes.

25 Q. Have you reviewed the Bryan Cave escrow records with

FC2VNEW7

Garvey - direct

1 respect to that particular matter?

2 A. Yes.

3 Q. What have you learned regarding the amount of money
4 received by Bryan Cave's escrow account with respect to that
5 particular matter?

6 A. It was a \$5.5 million transfer into our account which we
7 held in escrow.

8 Q. Was that \$5.5 million the only money received in Bryan
9 Cave's escrow account in connection with the Maxim acquisition?

10 A. Yes.

11 MR. ADAMS: Your Honor, may I approach?

12 THE COURT: Yes.

13 Q. Ms. Garvey, do you recognize that document?

14 A. Yes.

15 Q. What is it?

16 A. It is a check request requesting monies to be drawn, sent
17 out from the escrow account.

18 Q. Who was the requester?

19 A. Harvey Newkirk.

20 MR. ADAMS: Your Honor, the government offers Exhibit
21 152.

22 MR. FOLEY: No objection.

23 THE COURT: Received.

24 (Government's Exhibit 152 received in evidence)

25 Q. Ms. Garvey, what does this check request relate to?

FC2VNEW7

Garvey - direct

1 A. It is the monies that we held in escrow for this particular
2 matter that was being transferred out.

3 Q. On this document, how can you tell that this relates to
4 escrow?

5 A. You can't tell on this document, but the backup for that
6 would go with it, would show that it would be a transfer out of
7 our escrow account.

8 Q. And what was the amount that was to be transferred out?

9 A. 535,000.

10 Q. What was the date of the request please?

11 A. 11/12/2013.

12 Q. What's the payee name that appears at the top right?

13 A. Comvest Capital II LP.

14 Q. In the course of your duties, do you also have any
15 supervisory role with respect to recording the opening of new
16 matters for the firm?

17 A. No, that's done by our records department, opening the
18 matters.

19 Q. Do you have access to new matter litigation opening
20 records?

21 A. Yes, I view the new matters that are opened.

22 Q. Are you familiar with how new matters are logged by Bryan
23 Cave?

24 A. Yes.

25 Q. Are new matters generally opened by attorneys with actual

FC2VNEW7

Garvey - cross

1 knowledge of the new matters that are being opened?

2 A. There's a legal key system that new clients and matters are
3 entered into so that they are a new client and a matter number
4 is generated from that system.

5 Q. Are records of new matters being opened generally kept --
6 are generally made at the time that the new matter is being
7 requested?

8 A. Yes.

9 Q. Are those records maintained in Bryan Cave's normal course
10 of activities?

11 A. Yes.

12 Q. Have you reviewed new matter records with respect to the
13 same client associated with the Maxim acquisition?

14 A. Yes.

15 Q. At any point was a litigation matter opened or intended to
16 be opened for that client?

17 A. No.

18 MR. ADAMS: No further questions, your Honor.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. FOLEY:

22 Q. Good afternoon, Ms. Garvey.

23 A. Hello.

24 Q. My name is Jared Foley and I represent Harvey Newkirk.

25 Now, on direct examination you testified about an

FC2VNEW7

Garvey - cross

1 account that \$5.5 million was transferred into; correct?

2 A. Correct.

3 Q. This was an IOLA account; is that correct?

4 A. Correct.

5 MR. FOLEY: Can we please put up Government Exhibit
6 301 which is already in evidence.

7 Can you blow up the second half.

8 Q. What exactly is an IOLA account?

9 A. It's an account that we, the attorneys, are holding for a
10 third party, for the benefit of a third party. It's not -- it
11 doesn't belong to the attorneys; it's for the benefit of. And
12 then we'll hold it until we receive instructions to disburse it
13 per the attorney.

14 Q. So these funds are held there and kept separate from the
15 firm's funds; is that correct?

16 A. Correct.

17 Q. Are records associated with this account, are they kept by
18 Bryan Cave; that's correct?

19 A. Correct.

20 Q. Are these records -- they are maintained by your office?

21 A. Correct.

22 Q. Who has access to these records?

23 A. The accounting department.

24 Q. Does anyone else -- would a partner have access to these
25 records?

FC2VNEW7

Garvey - cross

1 A. No.

2 Q. I'd like to move on to -- I'd like to ask you some -- and
3 would the managing partner have access to those records?

4 A. No.

5 Q. I'd like to ask you some questions about what is the
6 process of wiring funds into that account.

7 So first off, what is the process for wiring funds
8 into an IOLA account?

9 A. Typically, I would get a request or my staff would get a
10 request to open an escrow account. It would need further
11 approval from the management of the firm in St. Louis, the CFO,
12 the executive committee, or the COO, before we open the
13 account.

14 Once that approval was received, then we would set up
15 the account with -- there's usually either an email from the
16 attorney explaining that they are opening up an account, we
17 need an account opened for that, or there's a form that they
18 would fill out that would explain who the client is, how much
19 money would it be expecting, and sometimes they would tell us
20 for a period of time, how long.

21 Q. You mentioned that you might seek the approval of people
22 from the management committee, the CFO, or COO.

23 A. COO.

24 Q. Who is the COO?

25 A. David Fleisher.

FC2VNEW7

Garvey - cross

1 Q. David Fleisher.

2 When trying to get approval to wiring funds into the
3 account, what kind of information is provided to David Fleisher
4 or the CFO, etc., before money is -- before the transfer is
5 actually approved?

6 A. They would usually ask for who the client was, how long
7 they've been a client, what's the nature of the transaction,
8 and how much money we'd be holding and for how long.

9 Q. So there came a point in November when Mr. Newkirk asked
10 that \$5.5 million be transferred into the IOLA account;
11 correct?

12 A. Asked for approval?

13 Q. Yes. He sought approval to have \$5.5 million transferred
14 into the firm's IOLA account.

15 A. Correct.

16 Q. Did he provide the information that is typically required?

17 A. Correct.

18 Q. This \$5.5 million, it was, in fact, moved into the IOLA
19 account; correct?

20 A. Correct.

21 Q. I want to move on to the process of sending a wire from the
22 IOLA account.

23 So first off, whose approval is required for this
24 process?

25 A. Again, that's another COO or the CFO needs to approve

FC2VNEW7

Garvey - cross

1 the -- once we've gotten the disbursement information that they
2 would approve, that it would be set out. Once we got
3 confirmation from the attorney that the client has approved the
4 transfer out, then we would process the transfer or write a
5 check.

6 Q. So first you would get approval from the COO or the CFO;
7 correct?

8 A. Correct.

9 Q. In what form would you get that approval?

10 A. That would be an email because they are in St. Louis.

11 Q. And then even after that you would seek additional approval
12 from the requesting attorney; is that correct?

13 A. Correct.

14 Q. In this case, isn't it true that David Fleisher approved
15 of --

16 MR. ADAMS: Objection to form.

17 THE COURT: Sustained as to form.

18 Q. David Fleisher approved of the transaction?

19 MR. ADAMS: Objection.

20 THE COURT: That's a matter not in evidence. You want
21 to ask her do you know of your personal knowledge who approved
22 this, you can ask that question.

23 MR. FOLEY: Thank you, your Honor.

24 Q. So do you know who approved of the wire transfer that you
25 mentioned on November 12th for the \$5.5 million?

FC2VNEW7

Garvey - cross

1 THE COURT: Just answer that question yes or no. Do
2 you know or do you not know.

3 THE WITNESS: Yes.

4 THE COURT: How do you know? Don't tell us who, just
5 tell us how you know.

6 THE WITNESS: By an email.

7 THE COURT: An email sent from -- to you or that you
8 were copied on or that you saw?

9 THE WITNESS: I saw.

10 THE COURT: An email that was prepared in the regular
11 course of business of Bryan Cave?

12 THE WITNESS: Correct.

13 THE COURT: Okay. And what did the email say?

14 Forgive me, counsel, that's what you wanted to ask.

15 MR. FOLEY: Sure.

16 BY MR. FOLEY:

17 Q. In addition to receiving this approval, does an attorney
18 need to fill out any paperwork for this wire to be sent?

19 A. Yes, the check request.

20 Q. Check requisition form.

21 A. Mm-hmm.

22 MR. FOLEY: Can we please put up GX 151. I'm sorry,
23 the one that you used was 152.

24 MR. ADAMS: Yes, but they're both in evidence.

25 MR. FOLEY: Can you put up GX 152 please.

FC2VNEW7

Garvey - cross

1 Q. So when filling out a check requisition form, before this
2 can be processed by your department, is it necessary that the
3 requesting attorney fill in the payee name?

4 A. Yes.

5 Q. Is it essential that he sign?

6 A. Yes.

7 Q. It's essential that he also put in his timekeeper number as
8 well; correct?

9 A. Correct.

10 Q. What is a timekeeper number?

11 A. It's like just a designation of what we assign every
12 attorney in the firm, just their number.

13 Q. So all this information allows you to know exactly who is
14 requesting the wire transfer; correct?

15 A. Correct.

16 Q. And it's essential, of course, that they need to put in the
17 payee name, as well; correct?

18 A. Correct.

19 Q. Harvey Newkirk, in fact, filled out one of these check
20 requisition forms; correct?

21 A. Correct.

22 Q. He's not the only one who filled out a check requisition
23 form in connection with this matter, is he?

24 A. Correct.

25 Q. Chaeri Tornay also filled out a check requisition form; is

FC2VNEW7

Garvey - cross

1 that correct?

2 A. Correct.

3 MR. FOLEY: Can we see GX 151 please.

4 Q. This transaction was likewise approved?

5 A. Correct.

6 Q. Once the check requisition form is filled out, who collects
7 the form?

8 A. Who collects --

9 Q. Yeah, how does it get to your -- do you just walk up and
10 pick up the form?

11 A. Well, the attorney would either send it to us, the
12 secretary would deliver it, or it would be in our office.

13 Q. At this point does the wire go out?

14 A. Once we've gotten the proper approvals from everybody and
15 the attorney, we would enter it into the system because
16 Citibank has an online escrow program that we would enter all
17 the information in and then we would send it out, yes.

18 Q. Now, once the wire has been sent out, you receive a federal
19 reference number; is that right?

20 A. Right.

21 Q. What is that?

22 A. It's a confirmation that the wire -- the money has been
23 sent into the fed system.

24 Q. And you keep records of these federal reference numbers and
25 these transactions; is that right?

FC2VNEW7

Garvey - cross

1 A. Correct.

2 Q. Is this because it's required by law that you keep a ledger
3 of IOLA transactions?

4 A. Right.

5 MR. ADAMS: Objection. Irrelevant.

6 THE COURT: Sustained.

7 Q. Now, there's no way that an attorney can send out a \$5
8 million wire without the prior approval of the chief operating
9 officer or the CFO of the managing committee; correct?

10 MR. ADAMS: Objection. Asked and answered.

11 THE COURT: Sustained.

12 Q. Harvey Newkirk, in fact, received the approval of the chief
13 operating -- of the COO and received the necessary approvals
14 from your office; is that correct?

15 MR. ADAMS: Objection. Asked and answered.

16 MR. FOLEY: I'm almost there.

17 THE COURT: Yes, it is. I will allow it to be
18 answered one last time and then we need to move forward.

19 What's the answer?

20 A. Can you repeat -- ask the question again?

21 Q. So Harvey Newkirk, in fact, received the necessary
22 approvals?

23 A. Yes.

24 THE COURT: So far as you know.

25 THE WITNESS: Correct.

FC2VNEW7

Garvey - cross

1 THE COURT: All right.

2 MR. FOLEY: Your Honor, may I have one moment?

3 THE COURT: Yes.

4 (Pause)

5 MR. FOLEY: Almost there.

6 Q. So there came a point on November 12th where Harvey Newkirk
7 contacted you and asked that the \$535,000 wire to Comvest be
8 cancelled; isn't that right?

9 A. In an email, yes, he sent an email.

10 Q. Is it true that Harvey Newkirk also called you later on
11 that day and requested that you try to get the \$4.9 million
12 wire returned to Bryan Cave?

13 A. It was a conference call that the director of
14 administration had connected me with him that said please
15 contact the bank, yes.

16 MR. FOLEY: I have nothing further.

17 Thank you for your time.

18 THE COURT: All right. Redirect.

19 MR. ADAMS: No redirect, your Honor.

20 THE COURT: Thank you very much. You may step down.

21 (Witness excused)

22 THE COURT: All right.

23 I understand the government has one final witness.

24 MR. ADAMS: Yes, your Honor.

25 The government calls Special Agent Paul Deal.

FC2VNEW7

Deal - direct

1 PAUL DEAL,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 THE COURT: Counsel.

5 MR. ADAMS: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MR. ADAMS:

8 Q. Agent Deal, where do you work?

9 A. I am a special agent with the United States Secret Service
10 in the New York field office.

11 Q. How long have you been with the Secret Service?

12 A. Five years.

13 Q. What's your role within the Secret Service?

14 A. The secret Service has two missions. Our first mission is
15 the protection of the President, the Vice President, our
16 dignitaries, and candidates. And our second mission is
17 investigations. I am the group leader of the electronic crimes
18 task force. We investigate wire fraud, network intrusions, and
19 other financial fraud.

20 Q. In the course of your duties have you been involved in an
21 investigation of the attempted acquisition of *Maxim Magazine*?

22 A. Yes.

23 Q. I direct your attention to February 12th, 2014.

24 Did there come a time that you spoke with an
25 individual named Harvey Newkirk on that day?

FC2VNEW7

Deal - direct

1 A. Yes.

2 Q. Do you see Mr. Newkirk in the courtroom today?

3 MS. CHAUDHRY: We stipulate.

4 THE COURT: So stipulated.

5 Q. Why were you speaking with Mr. Newkirk on that day?

6 A. He was the attorney involved in the intended purchase of
7 *Maxim Magazine*.

8 Q. Where did you speak with Mr. Newkirk on that day?

9 A. At the offices at Bryan Cave.

10 Q. Prior to speaking with Mr. Newkirk, what warnings, if any,
11 did you give him?

12 A. I gave him the 18 U.S.C. 1001 warning, which means if you
13 lie to a federal agent, you can be prosecuted for that.

14 Q. Did he agree to speak to you after you gave him that
15 warning?

16 A. He did.

17 Q. Who, if anyone, did he say his client was with respect to
18 the Maxim deal?

19 A. Calvin Darden Senior.

20 Q. Did he discuss the content of any private conversations
21 between himself and Calvin Darden Senior during that meeting on
22 February 12th?

23 A. He did not. He actually claimed attorney-client privilege
24 over all those conversations.

25 Q. Let me direct you -- was that the last time you spoke with

FC2VNEW7

Deal - direct

1 Mr. Newkirk?

2 MS. CHAUDHRY: Objection.

3 May we approach?

4 THE COURT: Yes.

5 (Continued on next page)

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FC2VNEW7

Deal - direct

1 (At the side bar)

2 MS. CHAUDHRY: Your Honor, as the Court may remember
3 from the hearing we had this summer, Mr. Newkirk was at that
4 meeting with Mary Beth Buchanan from Bryan Cave who testified
5 that she was there to assert the privilege and that she's the
6 one who asserted the privilege.

7 This is completely misleading testimony. That is not
8 how it went down. Both the government and this agent know
9 that. There was already a hearing on this matter that it was
10 Bryan Cave asserting the privilege and that's why, according to
11 Bryan Cave, they were there, to assert their attorney-client
12 privilege.

13 MR. ADAMS: I don't think that that question has any
14 intention at all with that. What he said was he did not have
15 conversations himself about Calvin Darden Senior on the basis
16 of attorney-client privilege.

17 THE COURT: What is it you want to get out of this
18 witness?

19 MR. ADAMS: That the first time they met he said
20 Calvin Darden Senior is my client.

21 THE COURT: Okay. Is that it?

22 MR. ADAMS: That's it.

23 THE COURT: All right. So why don't you just direct
24 his attention to Mr. Newkirk, say something about who was his
25 client or something like that.

FC2VNEW7

Deal - direct

1 MR. ADAMS: That was my first question. I'm done with
2 this.

3 THE COURT: Okay. So I don't see what the objection
4 was that --

5 MS. CHAUDHRY: The question was did he assert the
6 privilege. Completely misleading.

7 THE COURT: Okay. So we will strike the last question
8 and answer, but let's get on with the merits.

9 MS. CHAUDHRY: Yes.

10 MR. ADAMS: I'm sorry.

11 There are only a handful of documents that I will put
12 in through this witness. But I think a few of them are state
13 court suits against Mr. Newkirk that are being offered as
14 motive evidence he's been sued just before and early in the
15 course of the Maxim deal. They are not being put in for the
16 truth of any of the allegations other than to say he was, in
17 fact, sued and for the following amount of money that was being
18 demanded.

19 THE COURT: Well, I'll take those as they come up --

20 MR. ADAMS: Sure.

21 THE COURT: -- if there are objections, but I don't
22 think we need a sidebar.

23 MS. CHAUDHRY: I will object.

24 THE COURT: What?

25 MS. CHAUDHRY: I will object. And I hope the question

FC2VNEW7

Deal - direct

1 does not lead on that.

2 I will object.

3 THE COURT: On what ground?

4 MS. CHAUDHRY: 403, relevance of the fact that --

5 THE COURT: So let's take it one step at a time.

6 If the question is have you examined court records
7 that show or obtained certified court records that showed
8 Mr. Newkirk was sued in connection with this, what's your
9 objection to that?

10 MS. CHAUDHRY: It's not relevant that he was sued.

11 THE COURT: No, no, no. Their claim is that it is
12 relevant to his motivation.

13 But actually let me go back, because I may have said
14 that too quickly. How is it relevant to his motivation?

15 MR. ADAMS: He is under extreme financial stress as a
16 result of debts that resulted in lawsuits. It's also relevant
17 to misstatements --

18 THE COURT: Are these suits before or after this whole
19 thing blew up?

20 MR. ADAMS: They are long before it blew up.

21 THE COURT: So these are lawsuits relating to the
22 other matters.

23 MR. ADAMS: They are related to a default on his
24 mortgage which put him in nearly \$700,000 in debt.

25 THE COURT: Okay. So why isn't proof of his

FC2VNEW7

Deal - direct

1 impecunious circumstances relevant to motivation?

2 MS. CHAUDHRY: Your Honor, the default on the
3 mortgage, I would suggest, is a past bad act that they did not
4 give me 404(b) notice for.

5 THE COURT: That's not a bad act. If you think
6 defaulting on mortgages is a bad act, you haven't lived in the
7 United States very long.

8 Anyway, go on.

9 MS. CHAUDHRY: The second thing is it's not a
10 motivation because if the government was examining the full
11 records, they would say that's been settled and paid in full.
12 There was no financial motive at the time; he had no
13 outstanding lawsuits.

14 THE COURT: Is that true, at the time the Maxim deal
15 was --

16 MR. ADAMS: He was sued in June and again in August.

17 THE COURT: Sued in China?

18 MR. ADAMS: I'm sorry. Sued in June of 2013 by one
19 party, I think in August of 2013 by another. One of them
20 settled in December or January of 2013, and they have re-sued
21 him in federal court almost immediately thereafter.

22 THE COURT: I'm going to give general guidance and
23 then we need -- because we are running out of time.

24 If there is a lawsuit that was still active at the
25 time he began the Maxim deal, I will allow the fact of his

FC2VNEW7

Deal - direct

1 being sued and for how much to be introduced. I will not allow
2 the specific allegations of the lawsuit to be introduced. So
3 when he raises that with respect to any lawsuit, if you are
4 quite confident that that lawsuit was settled before the
5 relevant date, then I will sustain the objection. That's the
6 issue.

7 Let's get on with the other questioning.

8 (Continued on next page)

FC2VNEW7

Deal - direct

1 (In open court)

2 BY MR. ADAMS:

3 Q. Agent Deal, I was just asking you about some meetings
4 with --

5 THE COURT: I think I indicated at the sidebar the
6 last question and answer are stricken.

7 MR. ADAMS: Yes.

8 THE COURT: Okay. Go ahead.

9 Q. After your meeting with Mr. Newkirk on February 12th, 2014,
10 did you meet with him thereafter?

11 A. Yes.

12 Q. Approximately how many times?

13 A. Four to five.

14 Q. Let me direct you to January 22nd, 2015.

15 Did you meet with Mr. Newkirk on that day?

16 A. Yes.

17 Q. Where did you meet?

18 A. The office of Stealth SME in Manhattan.

19 Q. What did he provide you with on that day?

20 A. He gave me a business card.

21 Q. Can you turn to the binder in front of you to what has been
22 marked for identification as Government Exhibit 199.

23 Do you recognize that document?

24 A. Yes.

25 Q. What is it?

FC2VNEW7

Deal - direct

1 A. It's a photocopy of the business card.

2 MR. ADAMS: The government offers Exhibit 199.

3 MS. CHAUDHRY: Objection. Relevance.

4 THE COURT: Overruled.

5 (Government's Exhibit 199 received in evidence)

6 Q. Agent Deal, according to the business card, what was Harvey
7 Newkirk's role at Stealth?

8 A. Founder and principal.

9 Q. During this interview on January 22nd, 2015, did you
10 discuss a falling out between Calvin Darden Junior and Calvin
11 Darden Senior?

12 A. Yes.

13 Q. What did Mr. Newkirk tell you about that falling out?

14 A. That the father and son had a disagreement in November and
15 December of 2013; and that Senior Calvin Darden Senior had
16 called Mr. Newkirk and asked that certain financial documents
17 be returned to Senior. The one specific document I remember is
18 Fidelity statements.

19 And Mr. Newkirk told me that he told Senior that he'd
20 received the documents in electronic form, so it was kind of
21 pointless to email them back. But he did eventually mail some
22 documents back to Senior.

23 Q. Did you meet with Mr. Newkirk again in March of 2015?

24 A. Yes.

25 Q. At that time did you bring anything with you?

FC2VNEW7

Deal - direct

1 A. Yes.

2 Q. What did you bring with you?

3 A. The Comvest letter of intent, the Bank of America bank
4 statements, and then an email with several questions from Mark
5 Weinberg.

6 Q. And in this March meeting with Mr. Newkirk, who, if anyone,
7 did Mr. Newkirk claim to have represented in the Maxim deal?

8 A. The entities which I understood to be Darden Media Group
9 and Darden Media Holdings.

10 Q. How, if at all, was that different than what he had told
11 you previously?

12 A. Previously he told me that he represented Calvin Darden
13 Senior.

14 Q. Can I ask you to turn to what's been marked for
15 identification as Government Exhibit 2003.

16 A. Okay.

17 MR. ADAMS: One moment, your Honor. I apologize.

18 Q. Agent Deal, do you have what's been marked for
19 identification as Exhibit 2003?

20 A. I do.

21 Q. Do you recognize that document?

22 A. Yes.

23 Q. What is it?

24 A. This is a summons and complaint filed in the Supreme Court,
25 State of New York, County of New York, in the action *OneWest*

FC2VNEW7

Deal - direct

1 *Bank FSB v. Harvey Newkirk* and some other parties.

2 Q. Can you describe how you went about obtaining that
3 document?

4 MS. CHAUDHRY: Objection.

5 THE COURT: Are you challenging the authenticity of
6 the document in any way?

7 MS. CHAUDHRY: No.

8 THE COURT: No. Okay.

9 Sustained. It's irrelevant.

10 Q. Were you provided with a certified copy of this document?

11 A. I was.

12 MR. ADAMS: Your Honor, the government offers
13 Government Exhibit 2003.

14 MS. CHAUDHRY: Your Honor --

15 THE COURT: I thought what we had agreed to at sidebar
16 was that these documents were not coming in, but you could
17 elicit from the witness that Mr. Newkirk was sued, that the
18 suit was still alive at the time of the Maxim -- beginning of
19 the Maxim deal, and the amount of -- how much he was being sued
20 for and that was it.

21 So let's proceed.

22 MR. ADAMS: Sorry, your Honor.

23 Q. Agent Deal, have you reviewed that document?

24 A. I have.

25 Q. Could I ask you to turn please to the paragraph beginning

FC2VNEW7

Deal - direct

1 10.

2 THE COURT: Do you know from your review of that
3 document how much Mr. Newkirk was being sued for?

4 THE WITNESS: I don't know the exact amount, your
5 Honor.

6 THE COURT: Approximate. Does it say?

7 THE WITNESS: It does say.

8 THE COURT: I will take a look.

9 MS. CHAUDHRY: May we approach again now that I've
10 seen this document?

11 THE COURT: All right.

12 (Continued on next page)

FC2VNEW7

Deal - direct

1 (At the side bar)

2 MS. CHAUDHRY: Your Honor, if the government's basis
3 is that Mr. Darden was -- sorry -- Mr. Newkirk was under
4 suit --

5 THE COURT: He's right behind you and he heard that.

6 MS. CHAUDHRY: No, he didn't. He's got great hearing.

7 Now this is part of his motivation for jumping into a
8 conspiracy with Calvin Darden Junior in June or July. This is
9 a lawsuit that was not filed until August. This is after,
10 according to Mr. Darden, they signed all the fake documents
11 pretending to be the father and this is not relevant then.

12 THE COURT: No, no, no.

13 Your previous point was you thought all the suits had
14 been settled before the beginning of the Maxim deal and the
15 government represented that there were some that were still
16 ongoing.

17 Now you're making a different point, which is you're
18 saying, Well, this suit was initiated after the beginning of
19 the Maxim deal. But the same motivation that the government is
20 arguing would certainly apply to any lawsuit that was filed
21 after the beginning of the Maxim deal.

22 MS. CHAUDHRY: I don't see how Mr. -- the government
23 can argue that Mr. Newkirk had a pecuniary motive based on
24 something that happened after he joined --

25 THE COURT: No, no. Because I assume you're going to

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Deal - direct

1 be arguing that because he may have heard some misinformation
2 or something like that, that doesn't show he had actual
3 knowledge of the fraud. This comes back again to the whole
4 question, the argument the government is certainly free to
5 argue, that maybe initially he wasn't as motivated, but as time
6 went on, he was in a more desperate situation, he became more
7 motivated. I'm not saying that's a good argument or a bad
8 argument, but I think it's an admissible argument.

9 MR. ADAMS: It's also our position that you don't get
10 sued for this amount of money overnight.

11 THE COURT: In any event, you have, between you,
12 successfully guaranteed that we are going to go over to
13 tomorrow with this witness since it's five minutes of five.

14 Now, I really need to know now, other than the ruling
15 that I will consider argument on on whether there's
16 admissibility of the boxing thing, is Mr. Newkirk taking the
17 stand or not?

18 MS. CHAUDHRY: Right now, yes. We want to know what
19 your ruling would be.

20 THE COURT: I understand it's contingent on my ruling.

21 MS. CHAUDHRY: Yes.

22 THE COURT: I understand that.

23 MS. CHAUDHRY: We're very interested.

24 THE COURT: I just want to know so I can know what to
25 tell the jury.

FC2VNEW7

Deal - direct

1 Okay. All right.

2 (In open court)

3 THE COURT: All right.

4 So ladies and gentlemen, although we are down to the
5 last government witness, we're not going to be able to quite
6 finish him today because of some issues that have come up. And
7 you would have to come back tomorrow anyway because your work
8 is just beginning.

9 But tomorrow, just to give you a heads-up, we will
10 conclude the government's last witness. At that point we'll
11 take a break of about a half hour because of legal motions I
12 have to deal with that come up after one side has concluded its
13 argument. Then, depending on those motions, there may or may
14 not be a defense case. If we go forward with the defense case,
15 then it will probably at least be the remainder of most of the
16 day, it may go into Friday. I can't really tell you yet about
17 the schedule beyond tomorrow, but you will be here all
18 tomorrow.

19 So have a very good evening. We will see you at 9
20 o'clock tomorrow and see you then.

21 (Jury excused)

22 (Continued on next page)

23

24

25

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1 THE COURT: You may step down. We will see you
2 tomorrow.

3 (Witness excused)

4 THE COURT: Counsel, you want to go back to your
5 tables and please be seated.

6 MS. CHAUDHRY: I am going to request since these are
7 documents the government is planning to offer in their case in
8 chief that these are Rule 16 and not --

9 THE COURT: I am sorry?

10 MS. CHAUDHRY: That these are documents that are using
11 in their case in chief, I would request they be provided to me
12 as part of Rule 16 and not provided after the witnesses take
13 the stand.

14 MR. ADAMS: I believe they were provided several days
15 ago.

16 THE COURT: So I suggest that that is such an
17 important controversy that you go outside and duke it out.

18 Now let's turn to things of more relevance. So I have
19 been informed by counsel for Mr. Newkirk that it is his
20 intention to take the stand subject to changing his mind if
21 depending on the ruling I am about to make after hearing the
22 argument on the admissibility or not of what we've been calling
23 the boxing matter. Let me make clear that I think this is not
24 a rule 404 matter at all. It is a rule 608(b) and a Rule 403
25 matter. Under 608(b) a witness can be cross-examined about

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1 specific instances of conduct if these are probative of his
2 character for truthfulness. Clearly the boxing match stuff is
3 probative of his character for truthfulness or untruthfulness
4 as the case may be. On the other hand under 403 I can exclude
5 evidence if the relevance is substantially outweighed by the
6 prejudice or confusion or waste of time or the like. So let me
7 hear briefly from counsel for the defendant and the government
8 and then I will rule.

9 I have another matter that I have to take as soon as
10 we finish here.

11 Anything from the defense?

12 MS. CHAUDHRY: Your Honor, first of all, if the boxing
13 allegations come in, not only will there be an extreme
14 prejudice here because then the government's 404(b) motion
15 works and the jury hears that according to Mr. Darden Junior
16 that Junior and Mr. Newkirk have been in cahoots and on a
17 defrauding spree for years and that this is their trademark
18 fraud.

19 In order to combat it, and this is what we raised
20 within our papers, there will be a trial within a trial. Just
21 as we showed in this case that Mr. Darden Junior was running
22 some frauds at once, even within the Maxim deal, and some of
23 them were on Mr. Newkirk, that would be the same thing we have
24 to say here and some of the exhibits I had offered and offered
25 to introduce in a redaction show that that during the alleged

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1 boxing scheme in which the government says they were in cahoots
2 and that the government alleges that Mr. Newkirk knew that
3 Mr. Darden Senior was not actually involved, Mr. Darden Junior
4 is sending him letters pretending to be from the dad inviting
5 him to dinner.

6 In addition, it is an actually very complicated
7 corporate legal issue of the following. What the government
8 has done is introduced into evidence a letter of intent between
9 Invictus Pugilist LL something and Reign Entertainment. Anyone
10 with any knowledge of transactional law knows a letter of
11 intent is not a closing deal document. It is just a letter of
12 intent that sets out the terms of potential deal. This are
13 subsequent documents that show that -- well, one, if you
14 actually read it, what it shows is that at time Invictus
15 Pugilist had an interest in a particular deal that Reign was
16 doing, not that it had an interest in Reign. It has never been
17 the case that Mr. Newkirk had an interest in Reign. As the
18 Court is well aware, when companies do deals, they often make
19 subcompanies and then that subcompany does the deal to limit
20 liability and shield the current corporation. After that
21 letter of intent was entered, there is subsequent legal
22 documents that exist that will show that interest that
23 Mr. Newkirk's company had in that deal, never in Reign, but in
24 that dial with Reign were then transferred to Josh Mailman who
25 bought Mr. Newkirk out and at that time --

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1 THE COURT: I am sorry. All of this goes to I think a
2 different point. I've already allowed the government to get
3 into Reign and the prior events to the extent they bear on
4 motivation and if your argument is that you think the
5 motivation is refuted by other documents, of course that is
6 something you can bring out when Mr. Newkirk takes the stand.

7 All we're dealing now with is whether the government
8 can cross-examine Mr. Newkirk if he takes the stand about
9 things that in their view would allow the jury to infer that he
10 had entered into a fraudulent scheme in connection or had
11 assisted in a fraudulent scheme in connection with the boxing
12 transaction or had made false statements in connection with the
13 boxing transaction. That is what we're dealing with.

14 So let me hear from the government. We'll come back
15 to defense counsel.

16 MR. ADAMS: Your Honor, I think it is just as simple
17 as that. It would be questions about whether or not
18 Mr. Newkirk and Calvin Darden Junior agreed to steer
19 conversations.

20 THE COURT: When did this all occur? Early 2011, late
21 2010. It was not included in your indictment, but are you
22 saying there is a statute of limitations problem or are you
23 saying you just chose not to include it?

24 MR. ADAMS: It is something that came into light
25 through the investigation of Mr. Newkirk. We think it is

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1 actually direct evidence as we laid out in our motion *in limine*
2 of his knowledge with respect to the Maxim scheme. Again, the
3 dates and the lack of other witnesses, we made a decision about
4 what to charge and what not to charge. It doesn't mean that
5 evidence from 2011 that Calvin Darden Senior needs to be
6 specifically excluded from conversations about a personal
7 guarantee or conversations about using the fake name Calvin R.
8 Darden Senior even as far back as 2011 aren't relevant
9 specifically to the Maxim deal. It goes directly to
10 Mr. Newkirk's knowledge that the Maxim deal itself was a sham.

11 THE COURT: Let's go back to defense counsel. What
12 else did you want to say?

13 MS. CHAUDHRY: Your Honor, the other thing I want to
14 say is first the government is wrong. It is June of 2010, not
15 2011. Second their claim that they only recently learned about
16 it is not true because Mr. Newkirk in meeting with the
17 government, which he did five times, told them himself that he
18 had done this deal or tried to do this deal with Calvin Darden
19 Senior in explaining to the government how it is that he knew
20 him and what his basis was for believing that he was now
21 involved in this deal because he had done prior deals with him.

22 As for 608 the government is suggesting that they get
23 to ask questions and then the question is it. If that is the
24 way the Court is going, then I don't think they get to bring in
25 any other documents. If Mr. Newkirk says no, that is where we

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1 are.

2 THE COURT: So I find this an interesting but
3 essentially a close call. On the one hand the reason I kept
4 out this material in the government's direct case
5 notwithstanding that the Second Circuit takes a so-called
6 inclusive view of what is admissible under Rule 404(b) is that
7 I fear that it had the potential to be more confusing than
8 enlightening and that it also had the tendency that Mr. Newkirk
9 could conceivably be convicted not because of proof on what he
10 was charged with but because of proof of some other scheme.
11 Those considerations are not irrelevant to the present inquiry,
12 but the standards are different and the considerations are
13 different.

14 Because the government says that it believes it can
15 proof, and some of what I have seen in this regard suggests
16 that it is at least plausible, that the government's proof
17 could be viewed by the jury as putting the lie to some of the
18 positions that Mr. Newkirk through his counsel has in effect
19 raised through their questions of government witnesses and the
20 like regarding the scheme that is charged. In effect what the
21 government is arguing is that Mr. Newkirk's knowledge of
22 Mr. Darden Junior and his practices was very much informed by
23 what had occurred previously and that therefore it would be
24 artificial in the extreme not to be able to bring that out.

25 I think that much as my personal predilections might

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1 be to encourage any witness and any defendant to take the stand
2 because I think it advances the search for the truth, the case
3 law here and the whole thrust of prior cases involving Rule 608
4 strongly suggest that when a defendant takes the stand,
5 evidence like this is routinely admitted. So if he takes the
6 stand, I will allow him to be questioned about the boxing deal.

7 Now, in light of that I will give defense counsel the
8 opportunity to discuss with their client whether he still wants
9 to take the stand or not and you need to let the government
10 know the answer tonight by 9:00 tonight.

11 MS. CHAUDHRY: Your Honor, may I ask a question? I
12 had marked some exhibits that were precluded earlier. The
13 witnesses who would have laid a foundation are gone. Those
14 would be Mr. Darden Senior, Mr. Darden Junior. Mr. Darden
15 Senior did say in fact when he looked at those, yes, that is my
16 e-mail address. I would ask if the government is allowed to
17 bring this up to be able to introduce those documents.

18 THE COURT: First of all, I think you should consult
19 the government because they may agree to that. If they don't
20 agree, I may allow you to recall those witnesses for that very
21 limited purpose. So I think that is a fair request on your
22 part.

23 I would encourage the government to see if they can
24 reach agreement on that with you.

25 MS. CHAUDHRY: Your Honor, actually an issue for us we

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1 need some clarity on as to Mr. Newkirk's decision. The
2 government has issued a subpoena for him and his testimony and
3 addition for documents for him to provide if he does testify.
4 We have been trying to work with the government on what the
5 scope of these are and at this time we have not reached an
6 agreement and we don't know if the Court wants to address that.

7 THE COURT: I don't think I have time to address it
8 because in addition to other matter, I have to leave at 5:30
9 for Columbia where I teach. I will take that matter up first
10 thing tomorrow morning before we bring in the jury.

11 MS. CHAUDHRY: Would you like us to submit the
12 subpoena to you?

13 THE COURT: That will be helpful. I want to be clear
14 just before I let you go today, at 9:00 defense counsel will
15 e-mail the government and also the Court with their final
16 decision on whether Mr. Newkirk is going to take the stand or
17 not. If Mr. Newkirk is not going to take the stand, then you
18 should deal with the quite real possibility that summations
19 might begin tomorrow after we have the other defense witnesses
20 before we set the time limits. If we get down to 5:00 and the
21 summations are not over, they will continue on Friday morning.

22 After the government rests, I will give you my ruling
23 on the charge. I thank you both for your submissions, but I
24 will tell you in advance since you may want to do some
25 preparation at night if Mr. Newkirk decides not to take the

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1 stand that while you have requested some word changes here and
2 there, there will be no material changes in my charge.
3 Substantively it is going to remain pretty much the way you saw
4 it. I will hear final argument on that after the government
5 rests.

6 If of course Mr. Newkirk is going to take the stand
7 that seems self-evident we will not get to summations probably
8 until Monday or Tuesday because we're not sitting on Monday.

9 MS. CHAUDHRY: Your Honor, you mentioned before Juror
10 No. 1 being unavailable until 10:30. We would be fine with
11 that since they will be deliberating or hearing the end of my
12 closing.

13 THE COURT: What is the government's view?

14 MR. ADAMS: We agree.

15 THE COURT: That is fine. Whenever days we sit next
16 week, we'll sit beginning at 10:30 and go to 5:00, which will
17 be Tuesday. Their deliberations may go beyond that of course.

18 Very good. If you don't mind, you can come back and
19 get your stuff in 15 minutes, but I need to deal with this
20 other matter right now.

21 (Adjourned to December 3, 2015 at 9:00 a.m.)
22
23
24
25

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